Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-1150

CITY OF PHILADELPHIA, CITY OF GLEN COVE, LANDFILL AND DEVELOPMENT COMPANY, MAC SANITARY LANDFILL, INC., KINSLEY'S LANDFILL, INC., and DeLORENZO-INTERSTATE WASTE REMOVAL CO., INC. (Now INTERSTATE WASTE REMOVAL CO., INC.),

Appellants,

v.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY and RICHARD J. SULLIVAN, Commissioner of the Department of Environmental Protection of the State of New Jersey,

Appellees.

On Appeal From the Supreme Court of the State of New Jersey.

JURISDICTIONAL STATEMENT.

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IN THE

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OCTOBER TERM, 1975.

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No.

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CITY OF PHILADELPHIA, CITY OF GLEN COVE, LANDFILL AND DEVELOPMENT COMPANY, MAC SANITARY LANDFILL, INC., KINSLEY'S LANDFILL, INC. AND DELORENZO-INTERSTATE WASTE REMOVAL CO., INC. (Now INTERSTATE WASTE REMOVAL CO., INC.),

Appellants,

v.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY AND RICHARD J. SULLIVAN, COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY,

Appellees.

—

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW JERSEY.

—

JURISDICTIONAL STATEMENT.

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OPINIONS BELOW.

The opinion of the Superior Court of New Jersey, Law Division, declaring *P. L.* 1973, *c.* 363 (*N. J. S. A.* 13:1I-9,

10) unconstitutional is not reported. The opinion of the Superior Court of New Jersey, Chancery Division, in the companion case *Hackensack Meadowlands v. Mun. Landfill Auth.* is reported in the official reports at 127 *N. J. Super.* 160 (Ch. 1974), and in the unofficial reports at 316 *A.* 2d 711. The opinion of the New Jersey Supreme Court, reversing the trial court's decisions in each of the aforesaid cases, is published in the official reports as *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 *N. J.* 451 (1975), and in the unofficial reports as *Hackensack Mead. Dev. Com'n v. Municipal L. A.*, 348 *A.* 2d 505 (N. J. Sup. Ct. 1975). Said opinion is cited as *Hackensack Meadowlands v. Mun. Landfill Auth.*, – *N. J.* – (1975) in the within Jurisdictional Statement. Copies of all of the aforesaid opinions are collected in Appendices A-1, A-2 and A-3.

JURISDICTION.

This matter is brought pursuant to 28 *U. S. C.* § 1257(2) and in the alternative, 28 *U. S. C.* § 1257(3) to set aside the judgment of the New Jersey Supreme Court which upheld the constitutionality of *P. L.* 1973, *c.* 363. Said judgment was rendered on November 18, 1975, and entered on the same date. Thereafter, on December 11, 1975, the New Jersey Supreme Court remanded the matter to the Superior Court, Law Division, "for such further proceedings, if any, that that Court may deem appropriate . . ." (Appendix B, A55 *infra*). On December 19, 1975, the New Jersey Superior Court, Law Division, issued its order stating, in pertinent part, that ". . . no further proceedings are deemed appropriate by this Court . . ." (Appendix C, A57 *infra*). A notice of appeal to the Supreme Court of the United States was thereafter filed in the New Jersey Supreme Court on January 9, 1976 (Appendix D, A58 *infra*). The jurisdiction of the Supreme Court of the United States to review this suit (a) by direct

appeal is conferred by Title 28, *United States Code*, Section 1257(2), and alternatively (b) by certiorari is conferred by Title 28, *United States Code*, Section 1257(3). Appellants believe the following cases sustain the jurisdiction of the Supreme Court of the United States to review the judgment of the New Jersey Supreme Court in this case:

> *Pike v. Bruce Church, Inc.*, 397 *U. S.* 137 (1970);
> *Huron Cement Co. v. Detroit*, 362 *U. S.* 440 (1960);
> *Dean Milk Co. v. Madison*, 340 *U. S.* 349 (1951);
> *Brinkerhoff-Faris Co. v. Hill*, 281 *U. S.* 673 (1930);
> *Oklahoma v. Kansas Nat. Gas Co.*, 221 *U. S.* 229 (1911);
> *Railroad Co. v. Husen*, 95 *U. S.* 465 (1877).

The text of *P. L.* 1973, *c.* 363, the constitutional validity of which is involved in the present suit, reads as follows:

> "The legislature finds and determines that since the enactment of P. L. 1973, c. 39 (C 13:1I-1 et seq.) the volume of solid and liquid waste continues to rapidly increase, that the treatment and disposal of these wastes continues to pose an even greater threat to the quality of the environment of New Jersey, that the available and appropriate land fill sites within the State are being diminished, that the environment continues to be threatened by the treatment and disposal of waste which originated or was collected outside the State, and that the public, health, safety and welfare require that the treatment and disposal within this State of all wastes generated outside of the State be prohibited.

> No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, except garbage to be fed to swine in the State of New Jersey, until the commissioner shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State. Any person violating this provision shall be subject to the penalty and enforcement provisions of the 'Waste Control Act,' P. L. 1973, c. 39."

Said statute is published in the pocket part of Title 13, *New Jersey Statutes Annotated, Section* 1I-9 and 1I-10 at pp. 85-86.

QUESTIONS PRESENTED.

1. Is solid and liquid waste, or the process of collecting, treating and disposing of same, a legitimate subject of interstate commerce?

2. Does a state statute which prohibits the entry into the state of any solid or liquid waste (except garbage to be fed to swine in the state) collected in another state, discriminate against or place an undue burden upon interstate commerce?

3. In reversing an order granting a motion for summary judgment, may an appellate court constitutionally decide the case on its merits without offering the moving parties an opportunity to be heard, prior to the final determination, on the material issues of fact raised by their complaint?

STATEMENT OF THE CASE.

On January 2, 1974, *P. L.* 1973, *c.* 363, being

> "An Act to prohibit any person from bringing into this State any solid and liquid waste which originated or was collected outside the State . . . ,"

was approved by the Governor of the State of New Jersey, to become effective on February 1, 1974 (Appendix E, A61 *infra*).

On January 21, 1974, appellants filed a complaint attacking the constitutionality of said statute on federal and state constitutional grounds (Appendix F, A63 *infra*). Their simultaneous application for a temporary restraining order was supported by an affidavit of a licensed professional engineer (Appendix G, A86 *infra*) which averred that the transportation, treatment or disposal of solid waste in New Jersey in accordance with applicable Federal and New Jersey state and administrative laws, rules and regulations would not pose a threat to the health, welfare and safety of the residents of said state:

• • •

> "3. The transportation in New Jersey of solid waste in accordance with the terms and provisions of applicable Federal and New Jersey state and administrative laws, rules and regulations is not hazardous to the public health and does not constitute a threat to the health, welfare or safety of the residents of the State of New Jersey.
>
> 4. The treatment and disposal in New Jersey of domestic or foreign solid waste in accordance with the terms and provisions of applicable Federal and New Jersey state and administrative laws, rules and regulations is not hazardous to

> the public health and does not constitute a threat to the health, welfare or safety of the residents of the State of New Jersey." [1]

• • •

It was further supported by a copy of a letter dated December 26, 1973 from Richard W. DeKorte, Esq., Counsel to Governor William T. Cahill, to David Quient, Esq., city attorney of appellant City of Glen Cove (Appendix H, A89 *infra*), in which the Counsel to the Governor stated:

> "Also, I might add that Senate Bill No. 2367 (OCR) [*P. L.* 1973, *c.* 363] would not have been introduced had the sister states of New Jersey permitted solid wastes originating in their states to be disposed of at or near the point of origination."

Based upon the aforesaid documents, and additional affidavits which documented that immediate and irreparable harm would be suffered by appellants if temporary injunctive relief was not granted, the Superior Court of New Jersey, Law Division issued an Order to Show Cause with Temporary Restraints on January 21, 1974, which, *inter alia*, restrained the State from enforcing the provisions of *P. L.* 1973, *c.* 363 (Appendix I, A91 *infra*). On the return date of the Order to Show Cause, February 1, 1974, the trial court issued an interlocutory injunction continuing the restraints theretofore issued, and further specifically enjoining the enforcement of *N. J. A. C.* 7:1-4, until its further order [2] (Appendix K, A98 *infra*). In granting

1. The conclusions expressed in said paragraphs 3 and 4 have never been attacked or rebutted. Quite the contrary, they have been supported by appellees. See p. 9 *infra*.

2. *N. J. A. C.* 7:1-4, a rule governing the importation of solid and liquid waste from outside New Jersey, was adopted by the Commissioner of the New Jersey Department of Environmental Protection on January 18, 1974, pursuant to authority conferred by *P. L.* 1973, *c.* 363. Said rule, which was adopted as an emergency measure to become effective February 1, 1974, provides, in pertinent part, as follows:

N. J. A. C. 7:1-4.2

"(a) No person shall bring into this State, or accept for disposal in this State, any solid or liquid waste which originated or was collected outside the territorial limits of this State. This Section shall not apply to:

(1) Garbage to be fed to swine in the State of New Jersey;

(2) Any separated waste material, including newsprint, paper, glass and metals, that is free from putrescible materials and not mixed with other solid or liquid waste that is intended for a recycling or reclamation facility;

(3) Municipal solid waste to be separated or processed into usable secondary materials, including fuel and heat, at a resource recovery facility provided that not less than 70 per cent of the thruput of any such facility is to be separated or processed into usable secondary materials; and

(4) Pesticides, hazardous waste, chemical waste, bulk liquid, bulk semi-liquid, which is to be treated, processed or recovered in a solid waste disposal facility which is registered with the Department for such treatment, processing or recovery, other than by disposal on or in the lands of this State."

A verbatim copy of the entire rule as same appears in the *New Jersey Administrative Code* is attached hereto as Appendix J, A94 *infra*.

interlocutory injunctive relief, the trial court considered among others, an affidavit of the Deputy Assistant Administrator for Solid Waste Management Programs, United States Environmental Protection Agency (Appendix L, A100 *infra*), which averred, in pertinent part, as follows:

• • •

> "It has not been established to the satisfaction of EPA that the continuation of disposal, in an environmentally sound manner, of solid waste generated outside New Jersey poses any greater immediate health threat to its citizens than the

continued disposal of domestically generated solid waste. Therefore, there appears to be no immediate health threat to justify the precipitious passage and implementation of this statute [*P. L.* 1973, *c.* 363] and these regulations. [*N. J. A. C.* 7:1-4]

• • •

. . . a State importation ban such as that enacted by New Jersey is in conflict with the national policy set forth in Section 206 of the Solid Waste Disposal Act. . . . Moreover, the continuation of such a restriction would establish an unfavorable precedent which, if followed by a substantial number of other States, would render regional and interstate solutions to solid waste disposal problems impossible to attain.

• • •

The foregoing is not to say that appropriate standards should not be applied in the areas of treatment and disposal of solid wastes and of land use planning. We strongly favor the adoption of standards applicable to domestic and imported solid wastes so that they apply on an equal basis with out-of-state waste subject to the same statutory and regulatory treatment as domestic waste.

• • •

. . . A single thrust to ban out-of-state wastes impedes rather than enhances environmental quality.

In conclusion, it is EPA policy that no municipality or State should take action to prevent the free flow of waste across municipal or state

boundaries provided the transport, processing, and disposition of the waste is in accordance with the provisions of applicable federal and state environmental and land use laws, guidelines, regulations, and recognized engineering practices."

A plenary hearing on the merits of appellants' complaint was scheduled by the Court for March 25, 1974.

On February 11, 1974, John P. Fazzio, Inc., t/a John P. Fazzio Landfill Co. and Continental Vanguard, Inc. were granted leave to intervene.

Thereafter on February 13, 1974, appellees filed their answer to the complaint in this matter, wherein they specifically admitted that the principal concern of the New Jersey Legislature in adopting *P. L.* 1973, *c.* 363 was to preserve landfill acres in New Jersey for solid waste generated in said State. They further admitted that there is no qualitative difference between the solid waste which originates or is collected outside the State of New Jersey and that which originates or is collected within the State, and there is no difference with respect to the disposal of same (Appendix M, A106 *infra*).

On March 13, 1974, appellants deposed the Principal Environmental Engineer of the Bureau of Solid Waste Management, New Jersey Department of Environmental Protection. During the course of said deposition, the engineer admitted that the proposed Rules of the Bureau of Solid Waste Management, *N. J. A. C.* 7:26-1 *et seq.* (effective July 1, 1974) (Appendix N, A114 *infra*), were entirely adequate to protect the health, safety and welfare of the people of the State of New Jersey and the quality of its environment.[3] He also revealed that no effort had been

3. Said rules were designed to prohibit dumps and to comprehensively regulate solid and liquid waste disposal facilities. Particular attention was directed toward controlling problems which had regularly been associated with dumps, including (a) dust, (b)

made by the Department of Environmental Protection to calculate the total acreage available for sanitary landfill purposes in the State of New Jersey or to identify the location and availability of facilities which presently exist or may hereafter be developed outside the State of New Jersey (Appendix O, A195 *infra*).

Appellants thereafter moved for summary judgment on two federal constitutional grounds which, in their opinion, raised solely questions of law: (a) *P. L.* 1973, *c.* 363, on its face, discriminates against interstate commerce in violation of Art. 1, Sec. 8, cl. 3 of the Constitution of the United States, and (b) the Congress of the United States has preempted the narrow field preventing the adoption of laws, ordinances and regulations which prohibit the interstate movement of solid waste for purposes of treatment or disposal (Appendix P, A204 *infra*). Appellees cross-moved for summary judgment on the same issues, and urged in a portion of their brief filed with the trial court (Appendix Q, A206 *infra*), that summary judgment not be granted to appellants pending a hearing on the merits:

> "At this stage of the litigation *sub judice* the Court has not had an opportunity to consider any of the relevant facts and circumstances except for affidavits submitted in favor of and in opposition to the issuance of *ad interim restraints.*
>
> • • •
>
> Among those proofs which the court must consider are: the nature and extent of the dangers to the health, safety, welfare and environment of

3. (Cont'd.)
odor, (c) fire, (d) insects, (e) rodents, (f) scattering of papers and other lightweight materials, (g) gas generation, (h) surface and ground water quality, (i) collection and haulage, (j) open burning, and other related problems.

> New Jersey presented by the disposal of wastes in New Jersey; the nature and extent of the solid waste crisis in New Jersey; the rapid exhaustion of landfill life in New Jersey; the volume of out-of-state waste being disposed of in New Jersey; the severe limiting effects on the future development of property which has been used for sanitary landfill purposes; the extent of the effect on interstate commerce."

Pending a determination of the motions, the hearing date was rescheduled to April 15, 1974, if necessary.

On March 25, 1974, the trial court heard oral argument on the cross-motions for summary judgment, and delivered its opinion (Appendix A-1, A1 *infra*) granting summary judgment to appellants and striking down *P. L.* 1973, *c.* 363 on the ground that same discriminated against interstate commerce in violation of Art. 1, Sec. 8, cl. 3 of the Constitution of the United States:

> ". . . I find that the statute in question here is attempting to control material that is properly the subject of interstate commerce, that the method of attempting is discriminatory and, therefore, unconstitutional."

On April 23, 1974, appellees filed a notice of appeal (Appendix R, A207 *infra*), by which they appealed from the trial court's grant of summary judgment to appellants.

More than 4 months later, on July 26, 1974, appellees moved before the Superior Court of New Jersey, Appellate Division, for a stay of judgment (Appendix S, A209 *infra*). Said motion was denied by the Court on August 14, 1974 (Appendix T, A211 *infra*).

Following the submission of briefs by all parties, and prior to argument in the Appellate Division, the appeal

was certified directly to the New Jersey Supreme Court and consolidated with *Hackensack Meadowlands v. Mun. Landfill Auth.*[4] by order dated October 7, 1974 (Appendix U, A213 *infra*). The consolidated cases were argued before the New Jersey Supreme Court on December 2, 1974.

Almost one year later, on November 18, 1975, the New Jersey Supreme Court reversed the judgment of the trial court on the merits, and vacated the injunctive order which had been in effect since the inception of the litigation. Although the Court agreed that certain solid and liquid waste is merchantable and that the transportation and disposal of solid and liquid waste represents a legitimate subject of interstate commerce, *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 *N. J.*, *supra* at 466-469, it nevertheless upheld the constitutionality of *P. L.* 1973, *c.* 363 on the grounds that same represented a reasonable exercise of the State's police power and did not place an undue burden upon or discriminate against interstate commerce in violation of Art. 1, Sec. 8, cl. 3 of the Constitution of the United States. It also concluded that Congress did not preempt the field of solid waste disposal (Appendix A-3, A27 *et* seq., *infra*).

By its ruling, the New Jersey Supreme Court adopted a novel and unprecedented procedural approach: it disposed, on its merits, of a case involving substantial disputed issues of material fact which had never been heard

4. In *Hackensack Meadowlands*, suit was brought by the Hackensack Meadowlands Development Commission and the Department of Environmental Protection to enjoin the Municipal Sanitary Landfill Authority from accepting for disposal in its landfill site located within the Hackensack Meadowlands District any solid waste originating from or collected outside the territorial limits of New Jersey. The Superior Court, Chancery Division, held that the exclusion of out-of-state solid waste from deposit in landfill sites within the state was unconstitutional as representing a discrimination against interstate commerce.

by the trial court.[5] Since a hearing was not held, there was no testimony from which to make findings of fact with respect to either (a) the legitimacy of the exercise of the State's police power and the nature and degree of the burden imposed upon interstate commerce, or (b) the numerous issues of material fact raised by the remaining counts contained in appellants complaint. Curiously, such remaining counts were never mentioned by the New Jersey Supreme Court in its opinion.

On November 18, 1975, the same date upon which the case was decided, the New Jersey Supreme Court granted appellants emergent motion for a stay of judgment and interim injunctive relief pending its further order (Appendix V, A215 *infra*).

In an effort to cure the substantive prejudice brought about by a fundamental departure from established rules of procedure, appellants moved the New Jersey Supreme Court to retain jurisdiction pending a remand of the factual issues to the trial court on an expedited basis (Appendix W, A217 *infra*). The trial court reported that it could hold a plenary hearing within two weeks. In the alternative, appellants sought a stay pending an application for injunctive relief to the Supreme Court of the United States.

5. The trial court granted, as a matter of law, appellants' motion for summary judgment prior to the scheduled hearing date. The only facts presented to the trial court were contained in affidavits in favor of and in opposition to the issuance of interim injunctive relief, and these affidavits, with one exception, were not part of the record presented to the New Jersey Supreme Court at the time it decided the case. There was no reason to present said affidavits to the New Jersey Supreme Court since their purpose was solely to support an application for interim injunctive relief and *not* to prove a case involving disputed issues of material fact. Based upon the Rules of Court, appellants understood that the case would be remanded for a hearing on the merits if an appellate court reversed the order of the trial court granting summary judgment.

On December 11, 1975, the New Jersey Supreme Court denied appellants' motion for a stay, vacated the emergency stay that it had previously issued, effective December 31, 1975, and further

> "ORDERED that the motion for a remand to the Superior Court, Law Division, for such further proceedings, if any, that that court may deem appropriate is granted; provided, however, that any relief granted by the Law Division shall not include the issuance or continuation of a stay; and it is further
>
> ORDERED that this Court does not retain jurisdiction."

(Appendix X, A224 *infra*).

Based upon this order, appellants and intervenors were compelled, as a practical matter, to dismiss with prejudice every count in their respective complaints which had not been specifically resolved by the New Jersey Supreme Court in its decision of November 18, 1975, so that there would unquestionably be a final judgment from which a direct appeal could be taken to the Supreme Court of the United States. In the order pursuant to which the unresolved issues raised by appellants and intervenors complaints were dismissed (Appendix C, A56, *infra*), the trial court

> "FURTHER ORDERED, that, in light of the dismissal of the above counts, and the decision by the New Jersey Supreme Court upholding the constitutionality of P. L. 1973, c. 363 as representing a valid exercise of the State's police power which does not unreasonably burden interstate commerce and said Court thereby having finally determined Counts I, VII and XIX of plaintiffs' complaint and Count One of plaintiffs-intervenors complaint, no further proceedings are deemed appropriate by this Court in connection with the above captioned matter."

On December 22, 1975, appellants filed an application for a stay of judgment with Mr. Justice Brennan. Said application was granted on December 31, 1975 (Appendix Y, A225 *infra*).

THE QUESTIONS ARE SUBSTANTIAL.

A. Solid and Liquid Waste, and the Process of Collecting, Treating and Disposing of Same, Is a Legitimate Subject of Interstate Commerce.

Solid and liquid waste disposal presents questions that are national in scope and consequence.[6] It is now established that the disposal in one state of solid waste collected in another state constitutes an activity in interstate commerce.

In *United States v. Pennsylvania Refuse Removal Assn.*, 242 *F. Supp.* 794 (E. D. Pa. 1965), certain defendants were indicted and convicted for price fixing, allocating customers and rigging bids in connection with a refuse removal business in the Greater Philadelphia area in violation of the Sherman Anti-Trust Act. That Act provides, in pertinent part, "Every . . . conspiracy, in restraint of trade or commerce among the several states, . . . is declared to be illegal." 15 *U. S. C.* § 1.

The Court held that the disposal in New Jersey of substantial quantities of refuse collected in Pennsylvania constituted an activity within the flow of interstate commerce. In responding to defendants' argument that a worthless commodity like trash cannot be the subject of "trade or commerce" as those terms are used in the Sherman Act, the Court observed:

> "That argument misses the point. Here, the real subject of "trade or commerce" was not worthless debris, but the valuable service of removing and disposing of it. Since *services are encompassed within the meaning of the words "trade or commerce" as used in the Act*, United States v. Nat'l Ass'n of Real Estate Boards, 339 U. S. 485, 488-492, 70 S. Ct. 711, 94 L. Ed. 1007 (1950), the defendants position has no merit."
>
> *United States v. Pennsylvania Refuse Ass'n.*, 242 *F. Supp.*, *supra*, at 700. (Emphasis added).

6. See pp. 38-41 *infra*.

The decision of the Federal District Court was affirmed by the Court of Appeals for the Third Circuit which succinctly stated: ". . . refuse transported from Pennsylvania to New Jersey and disposed of in the latter state . . . was plainly a proper subject of interstate commerce." *United States v. Pennsylvania Refuse Removal Ass'n.*, 357 *F.* 2d 806, 808 (3rd Cir. 1966). Certiorari was denied by this Court, 384 *U. S.* 961 (1966).

Congress exercised its full power over interstate commerce in the Sherman Act, *U. S. v. Frankfort Distilleries*, 324 *U. S.* 293, 298 (1945), *U. S. v. Underwriters Ass'n.*, 322 *U. S.* 533, 558 (1844), *Las Vegas Merchant Plumbers Ass'n. v. United States*, 210 *F.* 2d 732, 739 (9th Cir. 1954). Therefore, if solid waste collection and disposal services in the flow of interstate commerce are viewed as trade or commerce for purposes of the Sherman Act, they also must constitute commerce within the meaning of the commerce clause, *U. S. Const.* Art. 1, Sec. 8, cl. 3.

While it is clear that the valuable service of removing and disposing of solid waste is an activity in interstate commerce, it is also clear that solid waste itself is often a merchantable commodity. For example, a United States District Court has recently held that the movement of automobile hulks across state lines constitutes interstate commerce. *Alexandria Scrap Corporation v. Hughes*, 391 *F. Supp.* 46, 59 (Md. 1975). Auto bodies are specifically included within the definition "bulky waste" in the Rules of the Bureau of Solid Waste Management. *N. J. A. C.*

7:26-1.4.3. More importantly, in *Hackensack Meadowlands v. Mun. Landfill Auth.*, 127 *N. J. Super.* 160, 170 (Ch. 1974), rev. other grnds. 68 *N. J.* 451 (1975), the companion case to the within matter, Judge (now Justice) Schreiber rejected appellees argument that solid and liquid waste is neither merchantable nor a legitimate subject of interstate commerce: ". . . refuse may be utilized for construction, landfill, recycling of paper, bottles and metal and production of electricity." Solid waste often represents a cost efficient and environmentally sound method to recover severely mined or devastated lands, to produce gas for commercial purposes, and to create power generation by incineration (Appendix Z, A228-29, A230 *infra*).

This Court has frequently held that, in the absence of controlling federal legislation or implied federal preemption, a state may exercise its police power to prevent deception or fraud upon the public, *Plumley v. Massachusetts*, 155 *U. S.* 461 (1894), the prompt disposal of large animals not slaughtered for food, *Clason v. Indiana*, 306 *U.S.* 439 (1939), and the importation of unhealthy swine or cattle, *Asbell v. Kansas*, 209 *U. S.* 251 (1908); *Mintz v. Baldwin*, 289 *U. S.* 346 (1933), decayed or noxious foods, *Crossman v. Lurman*, 192 *U. S.* 189 (1904); *Savage v. Jones*, 225 *U. S.* 501 (1912), or immature citrus fruits, *Sligh v. Kirkwood*, 237 *U. S.* 52 (1915).

The evident purpose of such regulations is to prevent the spread of contagion or disease, to protect an unsuspecting purchaser from acquiring food which is unfit for human consumption and to prohibit deceptive and fraudulent practices. *Bowman v. Chicago &c. Ry. Co.*, 125 *U. S.* 465, 489 (1888); *Sligh v. Kirkwood*, 237 *U. S.* 52, 59-60 (1915); *Baldwin v. G. A. F. Seelig*, 294 *U. S.* 511, 525 (1935).

However, even in these cases, the particular regulation must be reasonable in its requirements and promote its objective without discrimination:

> "The evident purpose of the statute is to prevent fraud and imposition in the sale of food for domestic animals,—a matter of great importance to the people of the state. Its requirements were directed to that end, and they were not unreasonable. It was not aimed at interstate commerce, but, without discrimination, sought to promote fair dealing in the described articles of food."
>
> *Savage v. Jones*, 225 *U. S.*, *supra*, at 525.

Appellees have never contended that either (a) the transportation, treatment or disposal of solid or liquid waste in accordance with applicable federal and state laws and regulations poses any material threat to the health, welfare and safety of the people of New Jersey or to the quality of its environment; or (b) an unsuspecting public will be deceived or defrauded by the transportation, treatment or disposal of solid or liquid waste collected in another state. The aforesaid line of cases does not properly relate to the matter *sub judice*. If it did, then state or municipal governments, according to appellees' argument below, could adopt with impunity codes to prevent air, water or land pollution which directly discriminate against interstate commerce; a practice which has been unmistakably rejected by this and other Courts. *Savage v. Jones*, 225 *U. S.*, *supra*, at 525; *Huron Cement Co. v. Detroit*, 362 *U. S.* 440 (1960); *Proctor & Gamble Co. v. City of Chicago*, 509 *F.* 2d 69 (7th Cir. 1974), *cert.* den. 421 *U. S.* 978 (1975); *American Can Co. v. Oregon Liquor Control Commission*, 15 *Ore. App.* 618, 517 *P.* 2d 691 (Ct. App. Ore. 1973); *Bowie Inn, Inc. v. City of Bowie*, 274 *Md.* 230, 335 A. 2d 679, 688 (Ct. App. Md. 1975). Even the movement of air pollutants across a state line has been held to constitute interstate commerce, *United States v. Bishop Processing Company*, 287 *F. Supp.* 624 (Md. 1968).

The interstate transportation of solid and liquid waste for treatment and disposal certainly represents a legitimate, indeed a necessary and vital activity in interstate commerce.

B. P. L. 1973, c. 363, on Its Face Discriminates Against and Directly Burdens Interstate Commerce.

The plain and unambiguous language of *P. L.* 1973, *c.* 363, entitled

> "An Act to prohibit any person from bringing into this State any solid and liquid waste which originated or was collected outside the State . . . ."

reveals that its sole intent and purpose is to impose an immediate, absolute, and complete ban upon the movement into or through New Jersey of any solid or liquid waste which originated or was collected outside the State. Treatment of liquid waste, processing of solid waste, and disposal or interstate movement of all waste collected outside New Jersey is equally prohibited. Conversely, no attempt whatsoever has been made in the statute to control, regulate or prohibit the movement, treatment, processing or disposal of solid or liquid waste which originates or is collected within the State of New Jersey.

Activities in interstate commerce are not by that fact alone immune from reasonable regulations adopted by a state or local government pursuant to the exercise of its reserved police power. *U. S. Const.*, Amend. 10. Absent controlling federal legislation, the commerce clause does not deprive the states of the power to regulate matters of local public concern in those areas where uniformity of regulation is not necessary, as long as the exercise of the police power serves a real and legitimate purpose and does

not place an undue or excessive burden on or discriminate against interstate commerce.

The test has been stated most recently by this Court in *Pike v. Bruce Church, Inc.*, 397 *U. S.* 137, 142 (1970):

> "Although the criteria for determining the validity of state statutes affecting interstate commerce have been variously stated, the general rule that emerges can be phrased as follows:
>
> *Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld* unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. *Huron Cement Co. v. Detroit*, 362 *U. S.* 440, 443. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will, of course, depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. Occasionally, the Court has candidly undertaken a balancing approach in resolving these issues. *Southern Pacific Co. v. Arizona*, 325 *U. S.* 761, but more frequently it has spoken in terms of 'direct' and 'indirect' effects and burdens. See e.g. *Schafer v. Farmers Grain Co., supra.*" (emphasis added)

Pursuant to the test announced in *Pike*, a balance will *not* be made between the burden imposed on interstate commerce, on the one hand, and the putative local benefits, on the other hand, unless the regulation (a) is evenhanded, (b) is based upon a legitimate local purpose, and (c) only

incidentally effects interstate commerce. If it is defective on any of these grounds, then the regulation must fall.

1. Evenhandedness.

A prohibition directed solely against solid or liquid waste which originates or is collected *outside* the State, and against the movement of such waste through New Jersey, is not evenhanded, and constitutes a discriminatory regulation of interstate commerce.

In the single paragraph of its opinion devoted to the discrimination issue, the New Jersey Supreme Court commented:

> "Nor has there been discrimination, at least in the economic sense. In examining this point we must look to the ends sought to be achieved. Here the purpose of the legislation is to protect the inhabitants and vital resources of New Jersey, not to impose economic barriers or create commercial restrictions. Nor is there any real or significant discrimination in favor of local collectors. Refuse amassed by them outside the State may not be brought into New Jersey. Conversely, residents of other states are free to collect and dump within the state."
>
> *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 *N. J., supra,* at 475.

In *Dean Milk Co. v. Madison,* 340 *U. S.* 349, 354 (1951), this Court struck down an ordinance of the City of Madison, Wisconsin, which prohibited the sale of milk as pasteurized unless it was processed and bottled at an approved pasteurization plant within a five mile radius from the central square of Madison. In response to Madison's argument that the ordinance was aimed simply at

protecting the health of the community, Mr. Justice Clark wisely noted that to sustain an ordinance simply because it denominates itself

> ". . . a health measure, would mean that the Commerce Clause of itself imposes no limitations on state action other than those laid down by the Due Process Clause, save for the rare instance, where a state artlessly discloses an avowed purpose to discriminate against interstate goods."

The Court's responsibility in this area has been emphasized by Mr. Justice Reed in *Best & Co. v. Maxwell,* 311 *U. S.* 454, 455-456 (1940) where he commented:

> "The commerce clause forbids discrimination, whether forthright or ingenious. In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce."

This responsibility has been undertaken conscientiously and with great care by the Court. In *Railroad Co. v. Husen,* 95 *U. S.* 465 (1877), the United States Supreme Court struck down a Missouri statute which prohibited the entry of Texas, Mexican or Indian cattle into any county in the State between the first day of March and the first day of December of each year. Commenting on the statute, the Court declared:

> "It is not a quarantine law. It is not an inspection law. It says to all natural persons and to all transportation companies, 'You shall not bring into the State any Texas cattle or any Mexican cattle or Indian cattle, between March 1 and December 1 in any year, no matter whether they are free from disease or not, no matter whether they

> may do an injury to the inhabitants of the State or not; and if you do bring them in even for the purpose of carrying them through the State without unloading them, you shall be subject to extraordinary liabilities.' Such a statute, we do not doubt, it is beyond the power of a State to enact. To hold otherwise would be to ignore one of the leading objects which the Constitution of the United States was designed to secure."
>
> *Railroad Co. v. Husen*, 95 *U. S., supra*, at 473.

As in the Railroad Co. case, *P. L.* 1973, *c.* 363 is neither a quarantine law nor an inspection law; and like the statute in that case, *P. L.* 1973, *c.* 363 says to all natural persons and to all transportation companies: "You shall not bring into the State solid or liquid waste of any nature or description, for any purpose whatsoever, no matter whether it does an injury to the inhabitants of the State or not; no matter whether it does an injury to the quality of the environment or not; and if you do bring it in even for the purpose of carrying it through the State without unloading it you shall be subject to extraordinary liabilities."

The fact that *Railroad Co. v. Husen* dealt with cattle and not with solid waste is neither material nor distinguishable. The principle is identical in each case; once an activity is legitimately in interstate commerce there can be no discrimination. See also *Best & Co. v. Maxwell*, 311 *U. S.* 454 (1940); *Head v. New Mexico Board*, 374 *U. S.* 424, 429 (1963).

In the leading environmental case, *Huron Cement Co. v. Detroit*, 362 *U. S.* 440, 448 (1960), an action was instituted by a corporation engaged in operating federally licensed steam vessels in interstate commerce to enjoin the enforcement of certain provisions of the Smoke Abatement

Code of the City of Detroit. Finding that the ordinance applied equally to all ships and did not destroy the right of free passage, this Court held that the ordinance was a valid exercise of the state's police power:

> ". . . state regulation based on the police power, *which does not discriminate against interstate commerce* or operate to disrupt its required uniformity, may constitutionally stand. . . .
>
> "It has not been suggested that the local ordinance, applicable alike to 'any person, firm or corporation' within the city, discriminates against interstate commerce as such. It is a regulation of general application, designed to better the health and welfare of the community. . . ." (emphasis added)

Although a smoke abatement ordinance enacted to promote the health and welfare of a city's inhabitants will generally support an exercise of the police power, the power to adopt such ordinances is not unlimited.

> "The basic limitations upon local legislative power in this area are clear enough. The controlling principles have been reiterated over the years in a host of this Court's decisions. *Even-handed local regulation* to effectuate a legitimate local public interest is valid unless pre-empted by federal action . . . , or unduly burdensome on maritime activities or interstate commerce . . . ."
>
> *Huron Cement Co. v. Detroit*, 362 *U. S. supra*, at 443 (citations omitted, emphasis added).

The Court, in *Huron*, stressed the fact that the local ordinance there in question was applicable alike to all persons, firms and corporations. It is most significant, as

noted by the Supreme Judicial Court of Maine in *Portland Pipe Line Corp. v. Environmental Imp. Com'n*, 307 A. 2d 1, 40 (Sup. Jud. Ct. Me. 1973), that

> "*The Detroit ordinance* [in *Huron*] *did not discriminate against interstate commerce* and there was no showing that national uniformity was required to prevent inconsistent local regulations." (emphasis added)

Had the ordinance been discriminatory, it surely would have been struck down.

For example, if the City of Detroit had attempted to reduce air pollution and thereby promote the health and welfare of the city's inhabitants by prohibiting the discharge of smoke in the Port of Detroit by any steam-powered vessel shipping out of another port while permitting such discharge by local vessels, then the ordinance would certainly represent an unconstitutional discrimination against interstate commerce.

Similarly, if the State of New Jersey had attempted to reduce air pollution by prohibiting any person from driving a motor vehicle upon the roads of this state unless the vehicle was registered in New Jersey, there would be an unmistakable and intolerable discrimination against interstate commerce.

If there is a threat posed to the health, welfare and safety of the people of New Jersey or to the quality of its environment by the treatment or disposal of solid and liquid waste in accordance with regulations administered by the Department of Environmental Protection (a position which appellants do not believe can be factually supported), *then it is a threat attributable to the nature of the substance being regulated, and not to its place of origin.* Remedial measures based upon the exercise of the State's police power must be undertaken in an evenhanded manner. There can be no discrimination in favor of intrastate commerce and against interstate commerce.

If the disposal of solid or liquid waste should be limited or eliminated for reasons of public health, conservation, or environmental quality, then origin is not at all a relevant factor. In those areas where the potential for ecological harm is minimal or non-existent, there is no legitimate basis to single out and discriminate against solid and liquid waste collected in another state.

In an effort to support its decision, the New Jersey Supreme Court noted that:

> "Other state and federal courts in very recent years have not hesitated to sustain legislation having as its aim the protection of health and the maintenance of environmental values and natural resources against attacks based upon alleged violations of the Commerce Clause."
>
> *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 *N. J., supra* at 476,

citing the following cases to support its observation: *American Can Co. v. Oregon Liquor Control Commission*, 15 *Ore. App.* 618, 517 *P.* 2d 691 (Ct. App. Ore. 1973) (ban on non-returnable beverage containers); *Proctor & Gamble Co. v. City of Chicago*, 509 *F.* 2d 69 (7th Cir. 1974), *cert.* den. 421 *U. S.* 978 (1975) (ban on phosphate detergents); *Portland Pipe Line Corp. v. Environmental Imp. Com'n*, 307 A. 2d 1 (Sup. Jud. Ct. Me. 1973), app. dis., 414 *U. S.* 1035 (1973) (prevention and control of marine oil spillage); *Construction Ind. Ass'n, Sonoma Cty. v. City of Petaluma*, 522 *F.* 2d 897 (9th Cir. 1975) (ban on further building).

Although the fact was neither expressed nor implied by the New Jersey Supreme Court, discriminatory treatment is entirely absent in each and every one of the

above-cited cases. Intrastate commerce is treated equally with interstate commerce.

In *Hackensack Meadowlands v. Mun. Landfill Auth.*, 127 *N. J. Super.* 160 (Ch. 1974) the companion case to the case at bar, Judge (now Justice) Sidney Schreiber [7] struck down regulations adopted by the New Jersey Department of Environmental Protection and the Hackensack Meadowlands Development Commission which prohibited persons engaged in the collection of solid or liquid wastes which originated or were collected outside the State from disposing of same in the Hackensack Meadowlands District. In language equally pertinent to the present matter, Judge Schreiber observed:

> "DEP and HMDC rationalize that discrimination is absent because the regulations do not prefer New Jersey over out-of-state landfill operators or garbage haulers. The difficulty with that rationale is that *it is the discrimination based on the origin of the refuse, not the residence of the owner or carrier, which is invidious.* Transportation of the refuse, whether carried by New Jerseyans or nonresidents, in interstate commerce is directly affected by the ban.
>
> Although the State's objective in attempting to conserve a local natural resource for local needs is a proper police power purpose, that cannot be

7. Subsequent to his decision in the *Hackensack Meadowlands* case, Judge Schreiber was elevated to the New Jersey Supreme Court. The *Hackensack Meadowlands* case was appealed by the State and consolidated for oral argument with the within-captioned matter. Both cases were disposed of in the same opinion. Understandably, Justice Schreiber did not participate in the proceedings before the New Jersey Supreme Court. However, it is evident from his opinion in *Hackensack Meadowlands v. Mun. Landfill Auth.*, 127 *N. J. Super, supra,* that a vigorous dissent would have been interposed if he had participated.

> accomplished by discrimination based on the source of the refuse."
>
> *Hackensack Meadowlands v. Mun. Landfill Auth.*, 127 *N. J. Super., supra,* at 174 (emphasis added).

A state cannot discriminate against interstate commerce under the guise of protecting the health of its citizens or its natural resources. The Court has a duty to determine for itself whether the regulation represents a valid exercise of the State's police power, or whether it is really and substantially a regulation of interstate commerce. *Asbell v. Kansas,* 209 *U. S.* 251, 256 (1908). The independent exercise of that duty is especially important because the power to determine the articles which may be the subject of commerce is, in effect, the controlling one. *Bowman v. Chicago &c. Railway Co.,* 125 *U. S.* 465 (1888).

In *Penna. v. West Virginia,* 262 *U. S.* 553, 597-598 (1923), a West Virginia statute prohibited the exportation of its natural gas unless an adequate supply was available to meet the needs of its citizens. Although the Supreme Court of the United States recognized that the gas supply was a natural product of the State and would be insufficient to meet the needs of the State if exportation was allowed, the statute had to fall because it represented "an attempt to regulate the interstate business to the advantage of the local customers."

Similarly, in *Oklahoma v. Kansas Nat. Gas Co.,* 221 *U. S.* 229, 255 (1911), this Court declared unconstitutional an Oklahoma "conservation" statute preventing a pipeline company from transporting natural gas outside the state:

> "If the States have such power a singular situation might result. Pennsylvania might keep its coal,

the Northwest its timber, the mining states their minerals. And why may not the products of the field be brought within the principle? Thus, enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequence does such power tend? If one state has it, all States have it; *embargo may be retaliated by embargo and commerce will be halted at state lines.* And yet we have said that 'in matters of foreign and interstate commerce there are no state lines'. In such commerce, instead of the States, a new power appears and a new welfare, a welfare which transcends that of any State. But rather let us say it is constituted of the welfare of all of the States and that of *each State is made greater by a division of its resources, natural and created, with every State,* and those of every other State with it. This was the purpose, as it is the result, of the interstate commerce clause of the Constitution of the United States. If there is to be a turning backward it must be done by the authority of another instrumentality than a court." (emphasis added)

An identical position was expressed by Mr. Justice Cardozo in declaring unconstitutional a statute which prohibited the sale in New York of milk purchased in another state at a lower price than the minimum prescribed by the New York statute. "The Constitution", commented Mr. Justice Cardozo, "was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin v. G. A. F. Seelig,* 294 *U.* S. 511, 523 (1935).

The parochial attitude identified by Mr. Justice Cardozo is equally evident in the within matter, and is calculated to lead to ruinous consequences on a national scale. There exists a substantial urgency compelling an immediate review of the constitutional validity of bans upon interstate solid and liquid waste disposal.

2. Legitimate Local Purpose.

The Rules of the Bureau of Solid Waste Management authorize the disposal[8] of solid waste in New Jersey through use of:

> "a. Sanitary landfills established, operated and maintained in accordance with the regulations set forth in this subchapter.
>
> b. Incinerators constructed, operated and maintained in accordance with Regulations of the New Jersey State Department of Environmental Protection promulgated under authority of the Air Pollution Control Act 1954 and regulations set forth in this subchapter.
>
> c. Transfer station, composting facility, resource recovery or other processing facility, constructed and operated in accordance with regulations set forth in this subchapter."
>
> *N. J. A. C.* 7:26-2.1.2.

The prohibition imposed by *P. L.* 1973, *c.* 363 is not directed against treatment or disposal at all: it is directed against entry. The effect of the statute is to prevent every form of disposal, even those authorized and regulated by

8. The word "disposal" is defined in said Rules as: "the storage, treatment, utilization, processing, or final disposition of solid waste." N. J. A. C. 7:26-1.4.20. The word "treatment" is not defined.

the Rules of the Bureau of Solid Waste Management, *N. J. A. C.* 7:26-1 *et seq*.

In deciding the case at bar, the New Jersey Supreme Court identified land preservation as the purpose supporting an exercise of the State's police power:

> ". . . extending the lifespan of existing landfills and thereby preserving further acreage from use as disposal sites is a legitimate and valid exercise of the police power of the State."
>
> *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 *N. J., supra,* at 472.

No other form of disposal was mentioned by the New Jersey Supreme Court as support for the enactment of *P. L.* 1973, *c.* 363.

Although a state has a responsibility to protect its people and their property, it is well-established that a police regulation which affects interstate commerce must not go beyond the necessities of the particular case. *Reid v. Colorado,* 187 *U. S.* 137, 151 (1902); *Smith v. St. Louis and Southwestern Ry. Co.,* 181 *U. S.* 248, 256 (1901).

If the purpose as found by the New Jersey Supreme Court, of *P. L.* 1973, *c.* 363 was to preserve land, then there was no basis to prohibit (a) entry, and (b) other authorized and regulated forms of disposal. The statute went far beyond what was reasonable and necessary in order to accomplish its purpose.

It is interesting that "garbage to be fed to swine in the State of New Jersey" is excepted from the prohibition imposed by *P. L.* 1973, *c.* 363. The word "garbage" is not synonymous or co-extensive with, but is narrower than, the term "solid waste". It is a word of art, separately defined in New Jersey as:

> ". . . all *putrescible* animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of . . . food . . . ."
>
> *N. J. A. C.* 12:100-2.1. (emphasis added)

Putrescible waste [9] has a greater potential for harm to the public health than bulky waste,[10] construction waste [11] or demolition waste.[12] Yet garbage to be fed to swine can freely enter New Jersey, while non-putrescible wastes and garbage intended for other purposes cannot.

P. L. 1973, *c.* 363 contains a Legislative finding

> ". . . that the public, health, safety, and welfare require that the treatment and disposal within this State of *all* wastes generated outside of the State be prohibited."
>
> *N. J. S. A.* 13:1I-9. (emphasis added)

Notwithstanding this finding, and in apparent inconsistency with it, the Commissioner of the Department of Environmental Protection is specifically empowered by

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9. *N. J. A. C.* 7:26-1.4.46—"Any waste liable to enter into a state of putrefaction, the typically anaerobic splitting of proteins by bacteria and fungi with the formation of foul-smelling, incompletely oxydized products."

10. *N. J. A. C.* 7:26-1.4.3—"Large items of solid waste which because of their size or weight requires handling other than normally used for municipal solid waste. Bulky waste includes but is not limited to such items as tree trunks, auto bodies, demolition or construction material, appliances, furniture, and drums."

11. *N. J. A. C.* 7:26-1.4.14—"Waste building material and refuse resulting from construction, remodeling, and repair operations on houses, commercial buildings, pavements, and other structures."

12. *N. J. A. C.* 7:26-1.4.17—"Waste generated from the razing of buildings, factories, and other man-made structures, including streets, roads, and fences."

the same statute to independently determine that the entry of solid and liquid waste collected in another state

> ". . . can be permitted without endangering the public health, safety and welfare . . . ,"
>
> *N. J. S. A.* 13:1I-10.

pursuant to regulations promulgated by the Commissioner permitting and regulating its treatment and disposal.

Sixteen days after the enactment of *P. L.* 1973, *c.* 363, and in accordance with the authority granted to him in said legislation, the Commissioner adopted *N. J. A. C.* 7:26-1.4 to become effective on the same date as the statute, February 1, 1974. Although said rule followed *P. L.* 1973, *c.* 363 in declaring a general prohibition against the entry into New Jersey of solid or liquid waste collected outside the State,

> "No person shall bring into this State, or accept for disposal in this State, any solid or liquid waste which originated or was collected outside the territorial limits of this State,"

certain designated wastes including pesticides, hazardous waste and chemical waste entering the State solely for processing or treatment, were excepted from the generalized entry ban. *N. J. A. C.* 7:1-4.2. This action by the Commissioner was exceedingly significant for at least two reasons: (a) contrary to the legislative finding, it demonstrated that the public health, safety and welfare, in actuality, did *not* require that the entry of *all wastes* generated outside the State be prohibited, and (b) if substances noxiously designated "hazardous waste" could be carried into New Jersey *without further regulation of transportation*, then it follows that the *mere entry* of any

other less hazardous waste *does not* endanger the public health, safety and welfare.

The fact that the Commissioner *may* permit the entry of solid and liquid wastes which are otherwise prohibited by *P. L.* 1973, *c.* 363 does not legitimitize the statute in a constitutional sense. All out-of-state wastes are banned until the Commissioner affirmatively acts. The Commissioner is neither compelled to act nor to deal with solid and liquid wastes collected within the State on an equal basis with those collected outside the State. In fact, the regulations that were adopted by the Commissioner on an emergency basis, *N. J. A. C.* 7:1-4, perpetuate the discrimination evidenced by *P. L.* 1973, *c.* 363, and point out the manifest impropriety of the prohibition. Furthermore, the Commissioner may amend or repeal regulations with relative ease. And no explanation is offered as to why the methods of treatment and disposal permitted by *N. J. A. C.* 7:1-4 for out-of-state wastes are significantly more restrictive than the list of approved methods for solid waste disposal contained in the Rules of the Bureau of Solid Waste Management, *N. J. A. C.* 7:26-1 *et seq.* If the methods of disposal delineated in *N. J. A. C.* 7:26-1 *et seq.* ". . . can be permitted without endangering the public health, safety and welfare . . .," *N. J. S. A.* 13:1I-10, then they can be permitted for solid and liquid waste collected outside the State as well as for those wastes collected within the State.

The disposal of solid waste in accordance with presently existing laws and regulations and in conformance with sound engineering practices [13] does not present a serious threat to the health or environmental safety of

13. A design prepared by a professional licensed engineer must be submitted to and approved by the Bureau of Solid Waste Management as a condition precedent to the operation of any new sanitary landfill or the expansion of any existing facility. *N. J. A. C.* 7:26-2.2.3.

the community. Appellees have never, by affidavit, disputed this conclusion, which is generally accepted throughout the United States.

In *Horn v. Community Refuse Disposal, Inc.*, 186 *Neb.* 43, 180 *N. W.* 2d 691 (Sup. Ct. 1970), plaintiffs brought an action to enjoin the establishment and operation of a sanitary landfill. The court denied the application saying:

> "The evidence is persuasive that it is possible to operate a sanitary landfill so that it will not emit offensive odors, pollute ground waters, or be attractive to rodents. The rules and regulations adopted in 1969 enforcible by the State Department of Health under statutory authority are reasonably designed to produce that result."
>
> *Horn v. Community Refuse Disposal, Inc.*, 180 *N. W.* 2d, *supra*, at 692.

The overwhelmingly accepted rule is that incinerators and sanitary landfills which are properly maintained and operated are not public nuisances. *Wood v. Town of Wilton*, 156 *Conn.* 304, 240 *A.* 2d 904 (Sup. Ct. 1968); *Rocchi v. Zoning Bd. of App. of Town of Glastonbury*, 157 *Conn.* 106, 248 *A.* 2d 922 (Sup. Ct. 1968); *Myers v. City of Hagerstown*, 214 *Md.* 312, 135 *A.* 2d 147 (Ct. App. 1957) (and cases therein cited); Annotation, "Public Dump as Nuisance", 52 *ALR* 2d 1134.

All too often, the words "sanitary landfill" and "dump" are confused with one another. They are very different entities. The Rules of the Bureau of Solid Waste Management define a sanitary landfill as:

> "The land disposal site employing an engineered method of disposal of solid waste in a manner that minimizes environmental hazards, including, but not limited to the spreading of the solid waste in thin layers, compacting the waste to the smallest practical volume, and applying cover material on a daily or more frequent basis."
>
> *N. J. A. C.* 7:26-1.4.54

A dump, on the other hand, is separately defined as:

> "A land site at which solid waste is disposed of in a manner which does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors, and scavengers."
>
> *N. J. A. C.* 7:26-1.4.23

When dumps were determined to be hazardous to human health, their operation was entirely prohibited in the State of New Jersey. *N. J. A. C.* 7:26-2.1.1. No distinction was made between waste collected within New Jersey and waste collected outside the State. The regulation acted in a non-discriminatory, even-handed manner in addressing a legitimate public problem. If a dump posed a substantial threat to public health and environmental quality, the place of origin of the waste deposited in it was entirely irrelevant.

Although incineration is a form of disposal authorized and regulated by the Rules of the Bureau of Solid Waste Management, *N. J. A. C.* 7:26-2.1.2b, solid and liquid waste collected outside New Jersey cannot be incinerated in New Jersey. *P. L.* 1973, *c.* 363; *N. J. A. C.* 7:1-4. This position is particularly incongruous in light of Appellees admission in their answer to the complaint that there is no qualitative difference between the solid waste which originates or is collected outside the State of New Jersey and that which originates or is collected within the State, and there is no difference with respect to the disposal of same. The burnability factor of each is identical (Appendix M, A109 *infra*).

Air pollution is not confined to artificially created state or municipal boundaries. It moves freely in "interstate commerce". *Georgia v. Tennessee Copper Co.*, 206 *U. S.* 230, 237 (1907); *United States v. Bishop Processing Company*, 287 *F. Supp.* 624 (Md. 1968). While a state has a legitimate local interest in regulating emissions into the air which its residents breathe, it cannot discriminate against or unduly burden interstate commerce in seeking to effectuate that interest. *Huron Cement Co. v. Detroit*, 362 *U. S.* 440, 443 (1960).

3. Effect Upon Interstate Commerce.

The direct burden imposed upon interstate commerce by the adoption of *P. L.* 1973, *c.* 363 is obvious and severe. Prohibitory legislation affects interstate commerce in a most basic and fundamental sense. As stated by Mr. Justice McKenna in *Oklahoma v. Kansas Nat. Gas Co.*, 221 *U. S., supra*, at 249, ". . . to prohibit interstate commerce is more than to indirectly affect it."

P. L. 1973, *c.* 363 directly prohibits the interstate disposal of solid and liquid waste. It is not unique in that respect. Since 1969, seven states have adopted laws which, to varying degrees, prohibit the disposal of solid waste collected in another state.[14] Three other states have imposed various regulatory limitations [15] (Appendix AA, A231 *infra*). The effect of these enactments is to retard, if not to entirely obviate, the national goal of achieving interstate

14. Maine, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island and Vermont.

On December 30, 1974, the Commonwealth of Pennsylvania enacted legislation to prevent the disposal in that Commonwealth of solid waste collected from any location in another state that does not accept solid waste from Pennsylvania. This legislation was surely prompted by, and retaliatorily directed against, the prohibitory legislation adopted in New Jersey.

15. Delaware, Illinois and Louisiana.

cooperation in confronting the solid waste disposal problem (Appendix L, A103 *infra*).

More than ten years ago, Congress identified solid waste disposal as a problem of national concern. In 1965 it enacted the Solid Waste Disposal Act, *Pub. L.* 89-272, for the purpose of promoting "a national research and development program for new and improved methods of proper and economic solid waste disposal", 42 *U. S. C.* § 3251(b)(1), and providing financial resources to accomplish same. Five years later, the Resource Recovery Act of 1970, *Pub. L.* 91-512 was adopted to underscore the importance of resource recovery. In both cases, the Secretary of Health, Education and Welfare (now the Administrator of the Environmental Protection Agency) was directed to ". . . encourge cooperative activities by the States . . . encourage, where practicable, interstate, interlocal, and regional planning . . .; and encourge the enactment of improved and, so far as practicable, uniform state and local laws governing solid waste disposal". 42 *U. S. C.* § 3254.

Prohibitory and retaliatory legislation is clearly alien to the expressed congressional intent. It creates a climate attuned to inhibit rather than to promote the national interest.

In addition, the cost of solid waste collection and disposal, which is already significant, will rise even more. An estimated $3 billion was spent annually for solid waste collection and disposal at the time of the adoption of the Solid Waste Disposal Act, 42 *U. S. C.* § 3251 *et seq.*, 1965 *U. S. Code, Cong. and Adm. News*, p. 3614. The cost of said service reached an estimated $4.5 billion by 1970, 1970 *U. S. Code, Cong. and Adm. News*, p. 4553. The House Report noted:

> "The greatest amount of the moneys spent goes for *collecting* solid waste *and transporting* it to

some place where it may be dumped or burned."

1970 *U. S. Code, Cong. and Adm. News,* p. 4553.

The New Jersey Supreme Court recognized the obvious economic impact of its decision upon interstate commerce:

"The City of Yonkers has access to the Croton dump in New York at a modest increase in cost of five dollars per ton. Philadelphia's stated alternatives are either to install adequate air pollution devices in their existing incinerators or to establish new landfill sites outside the city, which would require the purchase of additional disposal trucks."

Hackensack Meadowlands v. Mun. Landfill Auth., 68 *N. J., supra,* at 476.

Assuming a cost increase at the same "modest" rate of $5 per ton calculated for Yonkers, there would be a yearly cost increase of $7.5 million to persons disposing of out-of-state wastes in New Jersey based upon 1971 tonnage estimates compiled by the New Jersey Department of Environmental Protection. *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 *N. J., supra* at 461.

These figures do not take into account the economic harm which likely will be suffered by New Jersey in its efforts to dispose of the solid waste collected within its borders. Since a direct relationship exists in solid waste land disposal between cost and distance to disposal site, communities located in northern New Jersey will no doubt look to southern New York and eastern Pennsylvania, rather than to southern New Jersey, when existing landfill sites situated in the northern part of the state are consumed in an estimated 3 years. *Hackensack Meadowlands v. Mun. Landfill Auth.*, 68 *N. J., supra,* at 461. Unless this Court hears the instant matter, New Jersey communities will be immediately foreclosed from seeking disposal alternatives in Pennsylvania, either now or in the future, because retaliatory legislation has already been adopted by that Commonwealth.

In wording and in practical effect, *P. L.* 1973, *c.* 363 imposes a direct and intolerable burden upon interstate commerce which appellants respectfully call upon this Court to review.

C. Appellants Were Unconstitutionally Denied a Plenary Hearing on the Merits of Their Claim.

In granting appellants' motion for summary judgment on March 25, 1974, the New Jersey Superior Court, Law Division, declared *P. L.* 1973, *c.* 363 unconstitutional on the ground that it discriminates against interstate commerce.

The statements made by Mr. Justice Brennan, when he sat upon the New Jersey Supreme Court, in *Judson v. Peoples Bank & Trust Co. of Westfield,* 17 *N. J.* 67, 74, 110 *A.* 2d 24 (1954) continue to represent the definitive expression of the standards of decision governing the grant or denial of a summary judgment motion:

"It is designed to provide a prompt businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at a trial.

• • •

> The standards of decision governing the grant or denial of a summary judgment emphasize that *a party opposing a motion is not to be denied a trial unless the moving party sustains the burden of showing clearly the absence of a genuine issue of material fact.* At the same time, the standards are to be applied with discriminating care so as not to defeat a summary judgment if the movant is justly entitled to one." (emphasis added)

The trial judge's opinion reveals his determination as a matter of federal constitutional law, (a) that the transportation of solid or liquid waste across state lines is a legitimate subject of interstate commerce, and (b) that *P. L.* 1973, *c.* 363, on its face, discriminates against interstated commerce. Had the trial court not reached those conclusions, appellants' motion for summary judgment would have been denied, and the plenary hearing scheduled for April 15, 1974, would have been conducted.

By their notice of appeal (Appendix R, A207 *infra*), Appellees appealed to the Superior Court of New Jersey, Appellate Division:

> ". . . from the final judgment of the Superior Court, Law Division, Mercer County, entered on March 26, 1974, by the Honorable George Y. Schoch, declaring *P. L.* 1973, *c.* 363 unconstitutional as violative of Art. I, Section 8, Clause 3 of the Constitution of the United States in favor of plaintiffs, City of Philadelphia, Pennsylvania, City of Glen Cove, Long Island, New York, Landfill and Development Company, MAC Sanitary Landfill, Inc., Kinsley's Landfill, Inc. and DeLorenzo-Interstate Waste Removal Co., Inc."

Said notice of appeal also contained a certification that a plenary hearing had never been held before the trial court:

> "I hereby certify that there was no testimony taken in the above case. The matter was decided on summary judgment."

Appellees did *not* appeal from the denial of their cross-motion for partial summary judgment as, indeed, there was no reason for them so to do. Even if their motion had originally been granted by the trial court, it would not have disposed of the matter on its merits, but merely led to a hearing of the numerous remaining issues of material fact. A reversal of the judgment of the trial court by an appellate tribunal would have the same substantive effect.

Although the New Jersey Supreme Court agreed that the transportation and disposal of solid waste represented a legitimate subject of interstate commerce, it did not agree that *P. L.* 1973, *c.* 363 discriminated against interstate commerce. However, instead of reversing the decision of the trial court and remanding the matter for a hearing on the material factual issues presented by the complaint, it disposed of the entire matter by upholding the constitutionality of the statute. Appellants were thereby entirely deprived of an opportunity to present evidence on the reasonableness of the exercise of the State's police power and the extent of the burden upon interstate commerce. They were also deprived of their fundamental right to present evidence with respect to the numerous non-Commerce Clause issues raised by their complaint.

This result was incomprehensible. Appellees had never urged that they were entitled to judgment, as a matter of law, on the merits of the entire action. Quite to the

contrary, they specifically argued to the trial court that there were numerous unresolved questions of material fact:

> "At this stage of the litigation *sub judice* the Court has not had an opportunity to consider any of the relevant facts and circumstances except affidavits submitted in favor of and in opposition to the issuance of *ad interim restraints*.
>
> • • •
>
> Among those proofs which the court must consider are: the nature and extent of the dangers to the health, safety, welfare and environment of New Jersey presented by the disposal of wastes in New Jersey; the nature and extent of the solid waste crisis in New Jersey; the rapid exhaustion of landfill life in New Jersey; the volume of out-of-state waste being disposed of in New Jersey; the severe limiting effects on the future development of property which has been used for sanitary landfill purposes; the extent of the effect on interstate commerce."
>
> (Appendix Q, A206 *infra*).

Appellants petitioned the New Jersey Supreme Court to reconsider their decision. They pointed out that a plenary hearing had never been held on any issue raised by the complaint, including the reasonableness of the exercise of the State's police power and the extent of its burden upon interstate commerce, and that *P. L.* 1973, *c.* 363 was not being attacked on Commerce Clause grounds alone.

After considering appellants' arguments, the New Jersey Supreme Court remanded the case to the trial court ". . . for such further proceedings, if any, that that Court

may deem appropriate. . . ." (Appendix X, A224 *infra*). No guidance was given to the trial court as to what proceedings, if any, might be "deemed appropriate" by the New Jersey Supreme Court in light of its decision, on the merits, that *P. L.* 1973, *c.* 363 represented a reasonable exercise of the State's police power and did not unreasonably burden interstate commerce. Said decision was neither altered nor amended in connection with the remand. In addition, the Court refused to retain jurisdiction and specifically prohibited the trial court from granting any interim injunctive relief. After effectively depriving appellants of their day in court on the merits of their complaint, the Court also foreclosed appellants from pursuing procedural remedies in the trial court.

The net effect of these rulings was not only to place appellants in a substantially worse position than they would have been in had their motion for summary judgment initially been denied by the trial court, but also to deprive them of a most basic and fundamental right: appellants were never afforded an opportunity to be heard prior to a final determination by the New Jersey Supreme Court that *P. L.* 1973, *c.* 363 (a) represented a reasonable exercise of the State's police power, and (b) did not unreasonably burden interstate commerce. In addition, they were foreclosed from obtaining injunctive relief pending a resolution of ". . . such further proceedings, if any, that . . . [the trial] Court may deem appropriate . . . ."

As a practical consequence of this action,[16] appellants were constrained to dismiss, with prejudice, each and every count in their complaint which had not been directly

16. In the event the *status quo* was not maintained, but rather altered by the revocation of the interlocutory injunction issued by the trial court, appellants would have suffered immediate and irreparable harm. This appears to be consistent with the conclusion reached by Mr. Justice Brennan, who stayed the mandate of the New Jersey Supreme Court.

addressed by the New Jersey Supreme Court, so that a direct appeal could be taken to this Court.

Appellants respectfully contend that they have been denied due process of law by the New Jersey Supreme Court, in violation of the 5th and 14th amendments to the Constitution of the United States, and in contravention of the decisions of this Court.

The principle of federal constitutional law applicable to the case at bar has been reiterated time and time again by the United States Supreme Court:

> "The fundamental requisite of due process of law is the opportunity to be heard."
>
> *Grannis v. Ordean*, 234 *U. S.* 385, 394 (1914); *Mullane v. Central Hanover Tr. Co.*, 339 *U. S.* 306 (1950).

An opportunity to be heard includes an opportunity to present a case and to be heard in its support. *Brinkerhoff-Faris Co. v. Hill*, 281 *U. S.* 673, 681 (1930). Although appellants scrupulously followed the procedural rules inhering in the courts in the State of New Jersey, they were entirely deprived of an opportunity to be heard at a meaningful time and in a meaningful manner in order to defend their substantive right. They had no opportunity to be heard on the merits of any issue raised by their complaint prior to the final determination. *Rhodes v. Houston*, 202 *F. Supp.* 624 (Neb. 1962), aff'd 309 *F.* 2d 959 (8th Cir. 1962), *cert.* den. 372 *U. S.* 909 (1963), 383 *U. S.* 971 (1966).

The denial of this fundamental right was raised to the New Jersey Supreme Court at a conference meeting in the presence of appellees on November 18, 1975, the very same day that the case *sub judice* was decided. Accordingly, the additional federal claim presented by the within

due process argument was raised by appellants at their very first opportunity. *Brinkerhoff-Faris Co. v. Hill*, 281 *U. S.*, *supra*, at 678. It was asserted a second time less than two weeks later in a motion addressed to the New Jersey Supreme Court which resulted in the aforesaid order remanding the case to the trial court ". . . for such further proceedings, if any, that that Court may deem appropriate . . . ."

Upon appellants consent to dismiss all counts of its complaint *except* Counts I, VII and XIX, no further proceedings were deemed appropriate by the trial court,

> ". . . in light of . . . the decision by the New Jersey Supreme Court upholding the constitutionality of P. L. 1973, c. 363 as representing a valid exercise of the State's police power which does not reasonably burden interstate commerce and said Court thereby having finally determined Counts I, VII and XIX of plaintiffs' complaint . . . ."
>
> (Appendix C, A57, *supra*)

The action taken by the New Jersey Supreme Court in upholding the constitutionality of *P. L.* 1973, *c.* 363 without affording appellants an opportunity to be heard on the merits violates due process of the law. Fundamental rights cannot so lightly be discarded.

CONCLUSION.

The New Jersey Supreme Court has decided an issue of national importance in a way not in accord with the decisions of this Court, and in conflict with decisions of other state and federal courts which have recently decided cases involving environmental questions.

It has also so far departed from the accepted and usual course of judicial proceedings as to violate appellants' right to due process of the law in violation of the 5th and 14th amendments to the Constitution of the United States.

Because of the critical issues of great and general public interest involved, it is respectfully urged that this Court note jurisdiction and hear the case on its merits.

Respectfully submitted,

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ARTHUR MEISEL,
JAMIESON, MCCARDELL,
MOORE, PESKIN & SPICER,
A Professional Corporation,
Attorneys for Appellants.

JOHN R. PADOVA,
SOLO & PADOVA,
Special Legal Counsel to Appellant City of Philadelphia.

Certificate of Service.

We hereby certify that on this 13th day of February, 1976, three copies of this Jurisdictional Statement were mailed, with adequate first class postage prepaid, to Assistant Attorney General Stephen Skillman, at his office located in the State House Annex, Trenton, New Jersey, 08625; to Vincent J. Dotoli, Esquire, attorney for plaintiffs-intervenors at his law office located at Interstate 287 & McKinley Street, Plainfield, New Jersey 07080; and to David N. Samson, Esquire, attorney for defendants-respondents in the companion case *Hackensack Meadowlands v. Mun. Landfill Auth.*, A-81 (decided November 18, 1975), at his law office located at 80 Main Street, West Orange, New Jersey 07052.

We further certify that all parties required to be served have been served.

By .....
HERBERT F. MOORE

By .....
ARTHUR MEISEL

APPENDIX A-1.

SUPERIOR COURT OF NEW JERSEY.
LAW DIVISION—MERCER COUNTY.
DOCKET NO. L-15068-73 P. W.

CITY OF PHILADELPHIA, A MUNICIPAL CORPORATION OF THE COMMONWEALTH OF PENNSYLVANIA, CITY OF GLEN COVE, A MUNICIPAL CORPORATION OF THE STATE OF NEW YORK, LANDFILL & DEVELOPMENT CO., A N. J. CORPORATION, MacSANITARY LANDFILL, INC., A N. J. CORPORATION, KINSLEY'S LANDFILL, INC., A N. J. CORPORATION, AND DeLORENZO-INTERSTATE WASTE REMOVAL COMPANY, A N. J. CORPORATION, JOHN P. FAZZIO, INC., T/A JOHN P. FAZZIO LANDFILL COMPANY, AND CONTINENTAL VANGUARD, A N. J. CORPORATION,

Plaintiffs,

v.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, AND RICHARD J. SULLIVAN, COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY,

Defendants.

ORAL OPINION.

Before:

HONORABLE GEORGE Y. SCHOCH, J.S.C.

Place:

Mercer County Courthouse,
Trenton, New Jersey.

March 25, 1974.

Appearances:

JAMIESON, WALSH, MCCARDELL, MOORE & PESKIN, by MR. HERBERT F. MOORE, and ARTHUR MEISEL, appearing on behalf of the plaintiffs, attorneys.

MR. VINCENT J. DOTOLI, appearing on behalf of defendant Fazzio, attorney.

WILLIAM F. HYLAND, Attorney General of the State of New Jersey, by MR. MARK L. FIRST, Deputy Attorney General, appearing on behalf of the defendant-State of New Jersey.

THE COURT: Well, there are three separate points raised by the motions or, I should say, by the motion and countermotion presented here. Each side makes this argument for summary judgment conceding that as to these particular issues there are no material issues of fact involved and so that the issues before the court at the moment are ripe for summary judgment.

The New Jersey Legislature passed a law, Public Law 1973, Chapter 363, which says in part, "No person shall bring into this state any solid or liquid waste which originated or was collected outside the territorial limits of the state, except garbage to be fed to swine in the State of New Jersey, until the Commissioner shall determine such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this state."

There were emergency regulations promulgated by the Commissioner, N. J. A. C. 7:1-4.1 and N. J. A. C. 7:1-4.2. The second regulation sets forth certain exceptions, descriptions of exceptions to the prohibition of solid or liquid waste, including separated waste material that is

intended for re-cycling and certain other exceptions which are immaterial to the issue at hand.

Obviously the first matter that must be decided is whether the item of solid or liquid waste, we have been calling it garbage but it obviously includes more than just garbage, whether that item is a proper subject of interstate commerce. If it is not then there would be no prohibition against the state passing a law that prohibits the passage or importation of such item either through or into the state, since it would not violate the interstate commerce clause of the United States Constitution.

With reference to that point my attention has been called to two cases. One is the case of *Barnett v. A-1 Scavenger Service Co., Inc.*, a Missouri Court of Appeals case (1971) reported at 466 Southwestern 2d at 150. That case involved an interpretation of the Fair Labor Standards Act. A helper on a refuse truck who worked for an employer engaged exclusively in the collection and disposal of garbage and waste in the City of St. Louis, whether or not he was subject to the Fair Labor Standards provisions regarding minimum wage and overtime, because the employer collected waste from companies engaged in interstate commerce. At page 156 the court said, and I quote, "In the instant case it can scarcely be plausibly argued that the garbage and refuse after being collected by plaintiff entered the channels of interstate commerce, or the mere transportation of such garbage and other refuse for the purpose of disposing of it could be said to be commerce among the several states within the meaning of the Fair Labor Standards Act."

So we have the authority of that case which indicates that the transportation of trash and waste across the state line is not engaging in interstate commerce. On the other hand, there is a case of *U. S. v. Pennsylvania Refuse Re-*

moval Association, at 242 Federal Supplement 794, U. S. District Court case for the Eastern District of Pennsylvania (1965) where the court said at page 799, "Defendants argue at various points in their brief that because trash itself is by definition a worthless commodity, it cannot be the subject of 'trade or commerce' as those terms are used in the Sherman Act. That argument misses the point. Here, the relevant subject of 'trade or commerce' was not worthless debris, but the valuable service of removing and disposing of it. Since services are encompassed within the meaning of the words 'trade or commerce' as used in the Act, the defendant's position has no merit." And on appeal to the U. S. 3rd Circuit Court reported at 357 Federal 2d, 806 (1966), the 3d Circuit Court said at page 808, "From the record we are satisfied that the factual holding of the trial judge that 'the hauling and disposing of refuse was an integral part of the refuse removal business' is entirely correct. In that situation the refuse transported from Pennsylvania to New Jersey and disposed of in the latter state is a vital element of the one business operation which plainly is a proper subject of interstate commerce."

Then there is a citation of *Hoke v. U. S.*

Then we have the case of *U. S. v. Bishop Processing Company*, U. S. District Court, District of Maryland (1968) 287 Federal Supplement 624, which I think could be analogized to our case. In the Bishop case the question was whether a business or factory that polluted the air and that air pollution, malodorous pollution obviously affected business conditions and property values in the neighboring state when the wind blew the smell and pollutants across the state line. One of the questions that had to be decided was whether the Clean Air Act covered this activity, that is, whether or not movement of the air pollutants across state lines constituted interstate commerce.

And the District Court in Maryland decided, at page 629, that it did, saying, "The movement of pollutants across a state line is proper jurisdictional basis for the provisions of the Act relating to the abatement of interstate air pollution. Such movement of pollutants across state lines constitutes interstate commerce subject to the power granted the Congress by the Constitution to regulate such commerce."

From my analysis of the cases that I have just cited I think that the proper viewpoint to accept is that of the 3d Circuit that the transportation of waste across the state line is a subject of interstate commerce and, therefore, subject to the controls of Congress in accordance with the interstate commerce laws. However, that is not dispositive of the problem. The plaintiff suggested the second point that the Federal Government has pre-empted this field, and when I say this field I mean the field of prohibition of interstate movement of solid waste for either treatment or disposal.

I prefer to decide the problem on the basis of discrimination rather than on the theory of pre-emption because I think the issue is more clearly defined when we consider discrimination. I have already read certain portions of the federal code. I will refer to them again. 42 U. S. C. A. 3254. Let me read this in full. "The secretary shall encourage cooperative activities by the states and local governments in connection with solid waste disposal programs; encourage, where practicable, interstate, interlocal and regional planning for, and the conduct of, interstate, interlocal and regional solid-waste disposal programs; and encourage the enactment of improved and, so far as practicable, uniform state and local laws governing solid waste disposal."

In Section 3251 there are five parts to subsection (b) setting forth the purposes of this particular law, all of

which talk about assistance, technical advice, training grants, et cetera. None of which seems to me indicate the type of pre-emption that I feel would be required in order to find the Federal Government has pre-empted this field in the fashion that the plaintiffs suggest and to arrive at the decision the plaintiffs suggest.

So we come to the question of whether or not this statute passed by the Legislature of New Jersey which, as I have already indicated, I find involves material which is the subject of interstate commerce, whether the statute discriminates against interstate commerce to the extent that it should be declared unconstitutional. I immediately concede that I am aware of the cases which hold that there is a strong presumption that the statute is constitutional and the legislative act will not be declared void unless its repugnancy to the Constitution is clear beyond a reasonable doubt. Further, to declare a statute unconstitutional is a judicial power to be delicately exercised, quoting from *Harvey v. Essex County Board of Freeholders*, 30 N. J. 381. The Court in the case of *Supermarket General v. Sills*, 93 N. J. Superior, 326 (Chancery Div. 1966) cites a quotation from the U. S. Supreme Court case of *Head v. New Mexico Board of Examiners* at page 345. The New Jersey Court says, "A state law may not be struck down on the mere showing that its administration affects interstate commerce in some way. State regulation based on the police power which does not discriminate against interstate commerce or operate to disrupt its required uniformity may constitutionally stand."

As Judge Schreiber said in the case of *Hackensack Meadows Development v. Municipal Sanitary Landfill Authority*, a Chancery Division slip opinion dated February 13, 1974, page 12 of that slip opinion, "State regulations and laws based on the exercise of the police power

may only stand if they do not discriminate against interstate commerce."

I am aware of the long line of cases that deal with the transportation of deleterious substances. They are listed in *Baldwin v. Seelig*, 294 U. S. 511 (1934), opinion of Mr. Justice Cardozo, at page 525, 7 Lawyers Ed., 1039, which recites some of the cases which have upheld the statutes regulating the importation of unhealthy cattle, decayed foods. Mr. Justice Cardozo says, "Things such as these are not proper subjects of commerce (and notes) there is no unreasonable interference when they are inspected and excluded."

I think the situation is different in this case before me and I see a relationship between the natural gas cases and this case. Some may say it's a strained reason but the natural gas cases that I refer to are *Pennsylvania v. West Virginia*, 262 U. S. 553, and *West v. Kansas Natural Gas Company*, 221 U. S. 229. Each of those cases, the so-called home state attempted to prevent the exportation of one of its natural resources and the statutes were struck down as unconstitutional in derogation of the free flow of commerce, that it is Congress' prerogative to control and not the state.

If we consider, as I do, that the purpose of the statute in question here is to conserve natural resources of the state, that by restricting the amount of solid waste that is presented to the various disposal companies, the natural resources, the land, the availability of the land will be prolonged or extended or used less quickly. I don't see any difference between a state being prevented from prohibiting exportation of natural gas than the state being prevented from prohibiting the importation of something that will in effect use one of the state's natural resources.

Therefore, I find that the statute in question here is attempting to control material that is properly the sub-

ject of interstate commerce, that the method of attempting is discriminatory and, therefore, unconstitutional.

You will prepare an order, Mr. Moore?

MR. MOORE: Yes, sir.

(End)

COURT REPORTERS CERTIFICATION.

I, ANTHONY DI STEFANO, one of the Official Court Reporters of the Superior and County Courts of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes taken by me in the above entitled matter.

ANTHONY DI STEFANO
Anthony Di Stefano

Dated: March 28, 1974.

APPENDIX A-2.

[127 *N. J. Super.* 160, 316 *A.* 2d 711 (Ch. 1974)]

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HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION AND STATE OF NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, PLAINTIFFS, *v.* MUNICIPAL SANITARY LANDFILL AUTHORITY, A JOINT VENTURE OF WILLIAM A. KEEGAN, INC., RECLAMATION AND IMPROVEMENT CO., PETER ROSELLE & SONS, INC., AND DELAWARE SANITARY CO., DEFENDANTS, AND CITY OF YONKERS, NEW YORK, DEFENDANT-INTERVENOR.

Superior Court of New Jersey
Chancery Division
Decided February 13, 1974.

• • •

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Mr. Mark L. First, Deputy Attorney General, for plaintiffs (*Mr. George F. Kugler, Jr.,* Attorney General of New Jersey, attorney).

Mr. David Samson for defendants (*Messrs. Lieb, Wolff & Samson,* attorneys).

Mr. Eugene J. Fox, of the New York Bar, Corp. Counsel for City of Yonkers, pro hac vice for defendant-intervenor (*Messrs. Schapira, Steiner & Walder,* attorneys).

SCHREIBER, J. S. C. The Hackensack Meadowlands Development Commission (HMDC) and the State of New Jersey, Department of Environmental Protection (DEP),

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seek to enjoin the Municipal Sanitary Landfill Authority (MSLA) from accepting for disposal in its landfill site located within
the Hackensack Meadowlands District any solid wastes originating from or collected outside the territorial limits of New Jersey. Both HMDC and DEP had adopted regulations, effective September 1, 1973 and August 31, 1973, respectively, which prohibited such disposal.

An *ad interim* restraint, consented to by defendant, had been entered pending determination of the request for a permanent injunction. On the return date of the order to show cause defendants answered by challenging the constitutionality of the regulations and the Waste Control Act, *N. J. S. A.* 13:1I-1 *et seq.* The hearing was adjourned to allow plaintiffs time to respond to the challenges. In the meantime the City of Yonkers, New York, whose refuse was being deposited on the MSLA site, moved for and was granted leave to intervene as a party defendant. No testimony was taken at the hearing. The parties relied on affidavits and the transcript of proceedings taken before the Hackensack Meadowlands Commission on June 18, 1973.

MSLA has made a three-fold attack. It contends that (1) the Waste Control Act, regulation *N. J. A. C.* 7:26-1.5 promulgated thereunder, and certain regulations of HMDC, namely, *N. J. A. C.* 19:7-1.1(g) and (h), are invalid, arbitrary and unreasonable; (2) the procedure followed by DEP in promulgating its rule, *N. J. A. C.* 7:26-1.5, violated due process of law, and (3) all the above designated regulations and the Waste Control Act must fall because they violate Article 1, Section 8, paragraph 3 (the Commerce Clause) and Article 4, Section 2 (the Privileges and Immunities Clause), of the U. S. Constitution.

I

The Waste Control Act, *N. J. S. A.* 13:1I-1 to 8, recites that the Legislature found that the disposal of wastes generated or collected outside the State poses a threat to the quality of New Jersey's environment and that the Commissioner of Environmental Protection was empowered to create

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regulations prohibiting the "landfill of solid waste" and the "disposal of liquid wastes" within the State which originated or were collected outside New Jersey. The Commissioner adopted Regulation *N. J. A. C.* 7:26-1.5, effective August 31, 1973, which reads as follows:

> Out of State waste
>
> (a) No person engaged in the collection of solid or liquid wastes shall dispose of any solid or liquid wastes which originated or were collected outside the territorial limits of this State in sanitary landfills in the Hackensack Meadowlands District.
>
> (b) No person owning or operating a sanitary landfill within the Hackensack Meadowlands District shall accept for disposal in such sanitary landfill any solid or liquid wastes which originated or were collected outside the territorial limits of this State.

Defendant contends that there is no basis for the Legislature's findings, that the regulation is invalid in the absence of a showing of a causal relationship between banning out-of-state garbage in New Jersey and a threat to its environment, and that the regulation is overly broad by banning all wastes. The statute and the administrative regulations are presumptively valid. *Harvey v. Essex County Board*

of Freeholders, 30 *N. J.* 381 (1959); *Burton v. Sills*, 53 *N. J.* 86 (1968); *State v. Profaci*, 56 *N. J.* 346 (1970). Since one can reasonably and readily conceive of facts which would support the Legislature's findings and the Commissioner's regulations, the onus is on defendant to establish that the Legislature's and Commissioner's actions are arbitrary. *Consolidation Coal Co. v. Kandle*, 105 *N. J. Super.* 104 (App. Div. 1969), aff'd 54 *N. J.* 11 (1969); *Municipal Sanitary Landfill Authority v. Hackensack Meadowlands Development Comm'n*, 120 *N. J. Super.* 118 (App. Div. 1972); *Borden's Farm Products Co., Inc. v. Baldwin*, 293 *U. S.* 194, 55 S. Ct. 187, 79 L. Ed. 281 (1934). Defendant's proof consisted of an affidavit of an engineer, Dennis L. Backus, and the transcript of proceedings before the Hackensack Meadowlands Commission held on June 18, 1973 with respect to its proposed regulations. The affidavit asserts that quantities of solid

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wastes are used for construction purposes and that therefore a complete ban on disposal of out-of-state solid wastes is inappropriate. This conclusion does not necessarily follow because no reference is made to the amount of New Jersey refuse which is being used for landfill purposes, the limited amount of area available, and the environmental and public health impacts involved. Further, an affidavit of Lino Pereira, the Principal Environmental Engineer of DEP, asserts that sanitary landfills "present a pollution danger because they do not conserve or recover resources but bury them, and because they severely limit the future use of the land on which they are located." Additionally, he avers that sanitary landfills present a unique fire problem. An affidavit of Bernhard V. Lind, Acting Chief of the Bureau of Solid Waste Management in the DEP, asserts

that of the 55,000 tons per week of solid waste being disposed of in the Hackensack Meadowlands District, 10,000 tons originated outside New Jersey and there was an acute shortage of remaining landfill life located there. In view of all the foregoing, it is obvious that MSLA has not met its burden.

The same type of attack has been made upon regulations *N. J. A. C.* 19:7-1.1(g) and (h) of the HMDC. These regulations read as follows:

> 19:7-1.1(g). No solid waste originating or collected outside of the territorial jurisdiction of New Jersey shall be disposed of or treated within the Hackensack Meadowlands District. No sanitary landfill operator shall accept for disposal, at a sanitary landfill within the Hackensack Meadowlands District, any solid waste originating or collected outside of the territorial limits of New Jersey.
>
> 19:7-1.1(h). All operators of sanitary landfills within the Hackensack Meadowlands District shall submit to the Commission, together with their applications, as provided in Sections 3 and 4 of this subchapter, a certification stating that no solid waste originating or collected outside of the territorial limits of New Jersey will be accepted for disposal or treatment.

Defendant has made no showing that there was no basis for these regulations. The affidavits of William D. McDowell, Executive Director of HMDC, and George D. Cascino, its

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Chief Engineer, disclosed that three surveys had been made to determine the volume and origin of solid waste disposed of in landfills in the Hackensack Meadowlands District.

The first disclosed that in 1968 some 30,000 tons were entering the District each week, of which 4,000 tons originated outside New Jersey. HMDC study in 1971 revealed that the weekly tonnage was 42,000, of which 5,000 emanated from outside the State. In April 1973 HMDC updated its study. At that time weekly tonnage had increased to 55,000, of which 10,000 came from sources outside of New Jersey. The Commission concluded that the sites had only three years of life remaining and that banning of out-of-state garbage would extend the landfill life some six months.

Under the Hackensack Meadowlands Development Act the Commission must provide disposal facilities for the New Jersey municipalities (totalling 118, according to plaintiffs) which had been utilizing the District. *N. J. S. A.* 13:17-10(a), (b) and (e). The affidavits point out that the Commission needs as much time as possible to develop a viable alternate method of disposal. One cannot reasonably contend that promulgation of the regulations under the totality of these facts and circumstances was arbitrary.

Defendant also argues that the HMDC regulations contravene *N. J. S. A.* 13:17-6(w) and 13:17-10(b) and (e) by failing to provide for disposal facilities for waste equal to levels at the time the statute was passed, which levels included out-of-state waste. *N. J. S. A.* 13:17-6(w) authorizes HMDC "to provide solid waste disposal facilities for the treatment and disposal of solid waste, as hereinafter provided." *N. J. S. A.* 13:17-10 reads:

> (a) Within 6 months of the effective date of this act the commission shall undertake and complete a survey of the district to determine the total amount of solid waste treated and disposed on a daily basis in the district as of the effective date of this act by persons *in this State*.

> (b) The commission is hereby authorized, empowered and directed to guarantee that solid waste disposal facilities sufficient to treat and

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> dispose of the total amount of solid waste determined by its survey shall be available or be provided by the commission.
>
> • • •
>
> (e) The commission, in its discretion, may provide solid waste disposal facilities sufficient to treat and dispose of more than the total amount of solid waste determined by its survey, and may make such facilities available to persons other than those treating and disposing of solid waste in the district as of the effective date of this act. [Emphasis added]

Defendant reads these three sections together as guaranteeing continued use to *all* persons utilizing the disposal facilities in the Meadowlands at the time the act was passed. To interpret the statute in that way, however, one must delete the last three words in subsection (a). The inclusion of those words, "in this State," demonstrates that the Legislature was concerned about waste collected in New Jersey. If it intended to include all waste disposed of in the Meadowlands no matter where its origin, the phrase, "in this State" would not have been inserted, since, obviously, garbage dumped in the Meadowlands is dumped in this State. One must assume in interpreting a statute that the legislators would not insert a redundant or meaningless phrase. The only significance in these words is that the Legislature was interested in providing for disposal of New Jersey garbage—therefore, the remaining subsections, when referring to the "total amount of solid waste determined by its [the Commission's] survey," are concerned with the

total amount of garbage disposed of in the Meadowlands by *persons in this State, i.e.*, the total amount of New Jersey waste dumped in the Meadowlands. This is the only sensible interpretation. The concern of the New Jersey Legislature was to safeguard the area for New Jersey operations—not New York, Pennsylvania, or other jurisdictions. As Justice Jacobs wrote in *J. C. Chap. Prop. Owners', etc., Ass'n v. City Council*, 55 *N. J.* 86 (1969):

> When all is said and done, the matter of statutory construction here will not justly turn on literalisms, technisms or the so-called formal rules of interpretation; it will justly turn on the breadth of the objectives of the legislation and the commonsense of the situation. [at 100]

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To the same effect: *State v. New Jersey National Bank and Trust Co.*, 62 *N. J.* 50 (1972). Defendant's contention that the regulations contravene the enabling statute is unsound for the statute mandates only that the Commission guarantee disposal facilities for New Jersey communities utilizing the landfill sites as of the effective date of the act.

II

Defendant attacks the procedure followed by the DEP in adopting *N. J. A. C.* 7:26-1.5, claiming that the failure to hold a hearing prior to adoption of the rule denied defendants due process. This contention has no merit. Plaintiff DEP caused the proposed regulation to be published in the *New Jersey Register* on July 5, 1973, with the statement that "interested persons may present statements or arguments in writing relevant to the proposed action on or before August 3, 1973." 5 *N. J. R.* 220(c). This notice was consistent with the Administrative Procedure Act, *N. J. S. A.* 52:14B-1, *et seq.*, and complied with *N. J. S. A.* 52:14B-4(a)(2), affording any interested person a reasonable opportunity to be heard. Defendant concedes that the act does not require a formal hearing and that it did not submit a statement or request a hearing. The uncontroverted statement in the affidavit of Mr. Lind is that no written statement or argument was received by DEP from any interested person. Under these circumstances there was no constitutional or statutory requirement that a hearing be held prior to the promulgation of the regulations. *Motyka v. McCorkle*, 58 *N. J.* 165 (1971).

III

There remains defendant's constitutional challenges. *i.e.*, that the DEP and HMDC regulations set forth above violate Article I, Section 8, paragraph 3 (Commerce Clause) and Article IV, Section 2 (Privileges and Immunities Clause) of the U. S. Constitution. (Defendant has not

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argued the Waste Control Act is unconstitutional). Defendant has not vigorously advanced its argument with respect to Article IV, Section 2, and it is not necessary to deal with that contention in depth. Suffice it to say there are serious infirmities in that position, such as the fact that it is not applicable to corporations and that it only applies where there is no substantial reason for the discrimination. *Paul v. Virginia*, 8 Wall. 168, 75 *U. S.* 168, 19 L. Ed. 357 (1868); *Hemphill v. Orloff*, 277 *U. S.* 537, 48 S. Ct. 577, 72 L. Ed. 978 (1928); *Toomer v. Witsell*, 334 *U. S.* 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).

Article I, Section 8, provides that "Congress shall have power * * * to regulate commerce * * * among the several States * * *." DEP and HMDC contend that garbage is not a legitimate subject of trade or commerce and therefore

not within the purview of the Commerce Clause. They rely upon a number of cases which recognize the power of a state to forbid the sale or importation of impure foods or such articles as would spread disease and pestilence and would be immediate causes of destruction of or injury to human health and life. A state's prohibition of the interstate transportation of diseased animals has been held not to contravene the Commerce Clause. *Clason v. Indiana*, 306 *U. S.* 439, 59 S. Ct. 609, 83 L. Ed. 858 (1939). Similarly, statutes forbidding the importation and sale of adulterated or injurious food or drugs have withstood constitutional attacks. *Crossman v. Lurman*, 192 *U. S.* 189, 24 S. Ct. 234, 48 L. Ed. 401 (1904); *Price v. Illinois*, 238 *U. S.* 446, 35 S. Ct. 892, 59 L. Ed. 1400 (1915). In *Sligh v. Kirkwood*, 237 *U. S.* 52, 35 S. Ct. 501, 59 L. Ed. 835 (1915), a Florida statute prohibiting the exportation of fruits which were unfit for human consumption was held valid. All these cases classified the matter (diseased animals, adulterated food, fruit unfit for human consumption) as nonmerchantable. In all the food and drug cases the articles were banned to protect the public from mistaking them for pure and wholesome foods and to prevent the spread of disease. The articles in-

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volved had no useful purpose and were *per se* dangerous to health. On the other hand, refuse may be utilized for construction, landfill, recycling of paper, bottles and metal, and production of electricity. In passing, it might be noted that some successful incinerator systems which create waste heat for power generation exist in Germany, the Netherlands, France and Switzerland. In the instant situation there is no prohibition against the transportation of out-of-state garbage in or through New Jersey or the disposal of such refuse in New Jersey landfill sites located in places other than the Hackensack Meadowlands District.[1] It is not the danger to public health due to transportation of garbage in New Jersey or location of the garbage in a licensed landfill site in the State which is the evil that the Waste Control Act and the regulations are directed at. The purpose is conservation of the land used for disposal sites in the Hackensack Meadowlands District so that their life expectancy will be extended from 3 to 3½ years. In any event, the regulations in question here which are directed to the restricted use of sites for New Jersey garbage cannot be sanctioned on the concept that garbage is not a legitimate subject of interstate commerce.

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It is well established that a state may, in the exercise of its police power, enact legislation, even though it may affect interstate commerce, provided that the Federal Government has not preempted the field. *Gibbons v. Ogden*, 9 Wheat 1, 22 *U. S.* 1, 6 L. Ed. 23 (1824); *Missouri, Kansas & Texas Railway v. Haber*, 169 *U. S.* 613, 18 S. Ct. 488, 42 L. Ed. 878 (1898); *Sligh v. Kirkwood, supra.; Yellow Cab*

1. *L.* 1973, *c.* 363, enacted on January 2, 1974, authorizes the Commissioner of the Department of Environmental Protection to determine when any solid or liquid waste which originated or was collected outside New Jersey may not be brought into the State. He has enacted regulations to that effect. *N. J. A. C.* 7:1-4.2. The effect of that statute and regulations is not before the court, although they may render this decision moot. It is interesting to note that the regulations adopted by the Commissioner except from the prohibition separated waste material intended for recycling or reclamation, municipal solid waste to be processed into reusable secondary materials, including fuel and heat, and "hazardous waste" which is to be treated in a solid waste disposal facility. The new law and regulations are concerned with the public health as well as environmental impact. The Commissioner's definition of "hazardous waste" would appear to fall into category of nonmerchantable material not subject to the Commerce Clause. *N. J. A. C.* 7:1-4.1.

Co. of Camden v. State, 126 *N. J. Super.* 81 (App. Div. 1973), certif. den. 64 *N. J.* 498 (1974).

The Federal Government has not adopted legislation dealing with the use of waste landfill sites. Further, the regulations and statute in question are clearly within the authority of the State's police power to conserve its landfill sites. It has been recognized that the dumping of garbage in a landfill is an unattractive and undesirable use of land and that it creates potential health and fire hazards. In *Shaw v. Byram Tp.*, 86 *N. J. Super.* 598 (App. Div. 1965), Judge (now Justice) Sullivan wrote:

> • • • Garbage or refuse is unsightly, smelly, attracts flies and rodents, and is a potential fire hazard. It is a prime source of disease and contamination. It has been called a necessary evil because it is a by-product of civilized society. Ordinarily, some provision is made for its collection and disposal by the local government. However, problems of public health and welfare are involved, and no matter how carefully regulated, garbage dumps present some hazard to a community, the degree of hazard being directly related to the amount of garbage dumped. [at 602]

In *Municipal Sanitary Landfill Authority v. Hackensack Meadowlands Development Comm'n*, Judge Lynch approved the Commission's finding that:

> Sanitary landfills conducted on virgin land forever ruin the possibility of preserving the site for conservation. Additionally, such landfill operations can have an adverse effect on the ecological balance of the surrounding area. A sanitary landfill operation also has *severe limiting effects on future development of the property.* Problems of settlement, gas generation, and fires make it difficult to construct structures on former landfill sites. [120 *N. J. Super.* at 122]

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However, state regulations and laws based on the exercise of the police power may only stand if they do not discriminate against interestate commerce. In other words, the exercise of the police power may not be predicated on a method directed against interstate commerce. Plaintiffs concede that this is so. This nondiscrimination principle has been expounded in several United States Supreme Court decisions. In *Huron Portland Cement Co. v. Detroit*, 362 *U. S.* 440, 80 S. Ct. 813, 4 L. Ed. 2d 852 (1960), the City of Detroit had passed an ordinance which limited the permissible amount and density of smoke emissions from the boiler stacks of vessels while docked in the city. Huron Portland Cement Co., a Michigan corporation whose ships travelled among several states via the Great Lakes, challenged the code as an unlawful interference with interstate commerce. The court held that the ordinance was a valid exercise of the state's police power since it applied generally to *all* ships and did not discriminate in favor of local industry. Mr. Justice Stewart wrote:

> • • • State regulation, based on the police power, which does not discriminate against interstate commerce or operate to disrupt its required uniformity, may constitutionally stand. Hennington v. Georgia, 163 U. S. 299, 16 S. Ct. 1086, 41 L. Ed. 166; Lake Shore & M. S. R. Co. v. Ohio, 173 U. S. 285, 19 S. Ct. 465, 43 L. Ed. 702; Pennsylvania Gas Co. v. Public Service Com. 252 U. S. 23, 40 S. Ct. 279, 64 L. Ed. 434 [PUR 1920E 18]; Milk Control Bd. v. Eisenberg Farm Products, 306 U. S. 346, 59 S. Ct. 528, 83 L. Ed. 752; Bob-Lo Excursion Co. v. Michigan, 333 U. S. 28, 68 S. Ct. 358, 92 L. Ed. 455.
>
> • • •

It has not been suggested that the local ordinance, applicable alike to "any person, firm or corporation" within the city, discriminates against interstate commerce as such. It is a regulation of general application designed to better the health and welfare of the community. * * * We conclude that no impermissible burden on commerce has been shown. [at 448, 80 S. Ct. at 818].

In *S. C. Hwy. Dept. v. Barnwell Bros. Inc.*, 303 *U.S.* 177 58 S. Ct. 510, 82 L. Ed. 1522 (1938), Mr. Justice Stone, in upholding a state law which limited the width and load of trucks on state highways, wrote:

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The commerce clause by its own force, prohibits discrimination against interstate commerce, whatever its form or method, and the decisions of this Court have recognized that there is scope for its like operation when state legislation nominally of local concern is in point of fact aimed at interstate commerce, or by its necessary operation is a means of gaining a local benefit by throwing the attendant burdens on those without the state. Robbins v. Shelby County Taxing District, 120 U. S. 489, 498, 30 L. Ed. 1189; Caldwell v. North Carolina, 187 U. S. 622, 626, 47 L. Ed. 336. It was to end these practices that the commerce clause was adopted.

In *Guy v. Baltimore*, 100 *U. S.* 434, 25 L. Ed. 743 (1879), a Maryland statute authorized Baltimore to collect wharfage fees from all vessels which docked in city wharves, provided that the material to be loaded or unloaded was not produced in Maryland. The city adopted an ordinance accordingly. The court commented:

In the exercise of its police powers, a State may exclude from its territory, or prohibit the sale therein of any articles which, in its judgment, fairly exercised, are prejudicial to the health or which would endanger the lives or property of its people. But if the State, under the guise of exerting its police powers, should make such exclusion or prohibition applicable solely to articles, of that kind, that may be produced or manufactured in other States, the courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States. [at 443]

The court invalidated the ordinance on the ground that:

* * * no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens because engaged in the sale therein, or the transportation thereto, of the products of other States more onerous public burdens or taxes than it imposes upon the like products of its own territory. [at 439]

The court also indicated that the wharves were property held for public use by the municipality, which could not "be permitted by discrimination" to impede commercial intercourse. That property held for public use may not be limited on a discriminatory basis has peculiar pertinence here. The New Jersey Legislature has deemed it appropriate to classify op-

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erations of garbage landfill sites as public utilities. *N. J. S. A.* 48:2-13. As such they would appear to be affected with a public interest as much as a municipally owned wharf. It might be noted that the State has expressly pro-

hibited a public utility from directly or indirectly making or giving "any undue or unreasonable preference or advantage to any person, locality or particular description of traffic, or subject any particular person, locality or particular description of traffic to any prejudice or disadvantage." *N. J. S. A.* 48:3-4.

DEP and HMDC rationalize that discrimination is absent because the regulations do not prefer New Jersey over out-of-state landfill operators or garbage haulers. The difficulty with that rationale is that it is the discrimination based on the origin of the refuse, not the residence of the owner or carrier, which is invidious. Transportation of the refuse, whether carried by New Jerseyans or nonresidents, in interstate commerce is directly affected by the ban.

Although the State's objective in attempting to conserve a local natural resource for local needs is a proper police power purpose, that cannot be accomplished by discrimination based on the source of the refuse. In *Pennsylvania v. West Virginia*, 262 *U. S.* 553, 43 S. Ct. 658, 67 L. Ed. 1117 (1923), a West Virginia statute restricted the exportation of natural gas to ensure a sufficient supply for its own citizens. Although the Supreme Court recognized (at 598, 43 S. Ct. at 665) that "the gas is a natural product of the state and has become a necessity therein, that the supply is waning and no longer sufficient to satisfy local needs and be used abroad, and that the act is therefore a legitimate measure of conservation in the interest of people of the state," the statute had to fall because it interfered with interstate commerce.

Oklahoma enacted a law which prevented a pipeline company from transporting natural gas outside the state. The purpose of the law was to conserve natural gas in the Oklahoma fields for consumption in the state. In declaring the statute violative of the Commerce Clause, the U. S. Supreme

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Court, in *West v. Kansas Natural Gas Co.*, 221 *U. S.* 229, 31 S. Ct. 564, 55 L. Ed. 716 (1911), commented:

> • • • The statute of Oklahoma recognizes it to be a subject of intrastate commerce, but seeks to prohibit it from being the subject of interstate commerce, and this is the purpose of its conservation. In other words, the purpose of its conservation is in a sense commercial—the business welfare of the State, as coal might be, or timber. Both of those products may be limited in amount, and the same consideration of the public welfare which would confine gas to the use of the inhabitants of a State would confine them to the inhabitants of the State. If the States have such power a singular situation might result. Pennsylvania might keep its coal, the Northwest its timber, the mining States their minerals. And why may not the products of the field be brought within the principle? Thus enlarged, or without that enlargement, its influence on interstate commerce need not be pointed out. To what consequence does such power tend? If one State has it, all States have it; embargo may be retaliated by embargo, and commerce will be halted at state lines. And yet we have said that "in matters of foreign and interstate commerce there are no state lines." In such commerce, instead of the States, a new power appears and a new welfare,—a welfare which transcends that of any State. But rather let us say it is constituted of the welfare of all of the States and that of each State is made the greater by a division of its resources, natural and created, with every other State, and those of every other State with it. This was the purpose, as it is the result, of the interstate commerce clause of the Constitution of the United

States. If there is to be a turning backward it must be done by the authority of another instrumentality than a court. [at 255, 31 S. Ct. at 571]

The Commissioner of Environmental Protection and the Hackensack Meadowlands Development Commission adopted the regulations in question to expand the life of the landfill sites for garbage collection in the Hackensack Meadowlands District from 3 to 3½ years. To attempt to accomplish that end by discriminating against sources of refuse solely because they originate or are collected outside the State under the circumstances here contravenes Article I, Section 8, Clause 3 of the U. S. Constitution. The regulations are invalid.

APPENDIX A-3.

[68 *N. J.* 451, 348 *A.* 2d 505 (1975)]

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HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION and State of New Jersey Department of Environmental Protection, Plaintiffs-Appellants,

v.

MUNICIPAL SANITARY LANDFILL AUTHORITY et al., Defendants-Respondents,

and

City of Yonkers, New York
Defendant-Intervenor-Respondent

CITY OF PHILADELPHIA, etc., et al.,
Plaintiffs-Respondents,

and

John P. Fazzio Landfill, Inc., t/a John P. Fazzio Landfill Co., et al., Plaintiffs-Intervenors-Respondents,

v.

STATE of New Jersey et al., Defendants-Appellants.

Supreme Court of New Jersey.
Argued Dec. 2, 1974.
Decided Nov. 18, 1975.

• • •

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Mr. Stephen Skillman, Assistant Attorney General, argued the cause for defendants-appellants (*Mr. William F. Hyland*, Attorney General of New Jersey, attorney; *Mr. Skillman*, of counsel; *Mr. Mark L. First*, Deputy Attorney General, on the brief).

Mr. Herbert F. Moore argued the cause for plaintiffs-respondents, City of Philadelphia, etc., et al (*Messrs. Jamieson, Walsh, McCardell, Moore and Peskin*, attorneys; *Mr. Moore*, of counsel; *Mr. Arthur Meisel*, on the brief).

Mr. Vincent J. Dotoli argued the cause for plaintiffs-intervenors-respondents, John P. Fazzio, Inc., t/a John P. Fazzio Landfill Co., et al.

Mr. David Samson argued the cause for defendants-respondents, Municipal Sanitary Landfill Authority, etc. (*Messrs. Leib, Wolff and Samson*, attorneys).

Mr. Stephen Skillman, Assistant Attorney General, argued the cause for plaintiffs-appellants (*Mr. William F. Hyland*, Attorney General of New Jersey, attorney; *Mr. Skillman*, of counsel; *Mr. Mark L. First*, Deputy Attorney General, on the brief).

The opinion of the Court was delivered by

MOUNTAIN, J.

These proceedings involve the joint review of two separate cases. In one case the judgment was entered pursuant to an opinion rendered in *Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority*, 127 N. J. Super. 160, 316 A. 2d 711 (Ch. Div. 1974). In the other, judgment was entered following the rendition of an oral opinion in a suit brought by the City of Philadelphia, together with the owners of several landfill operations in South Jersey, against the State of New Jersey and its Department of Environmental Protection (DEP). The [456] cumulative effect of these two judgments was to render unconstitutional certain sections of the Waste Control Act, N. J. S. A. 13:11-1 *et seq.*, together with regulations promulgated by DEP and by the Hackensack Meadowlands Development Commission (HMDC). The measures declared unconstitutional had as their purpose the exclusion from this State of solid waste originating elsewhere. In each suit the trial court found that the laws and regulations under review violated the Commerce Clause, Article 1, § 8, clause 3, of the United States Constitution.

I

The comprehensive authority and responsibility delegated by the Legislature to the HMDC in the Hackensack Meadowlands Reclamation and Development Act, N. J. S. A. 13:17-1 *et seq.*, includes the power to provide facilities for the treatment and disposal of solid waste. N. J. S. A. 13:17-6(w), 13:17-10. The Waste Control Act, N. J. S. A. 13:1I-1 et seq., as originally enacted, contained a legislative finding "that the quality of New Jersey's environment is being threatened by the treatment and disposal of wastes generated or collected outside the State . . ." N. J. S. A. 13:1I-2. By amendments to this act that became effective early in 1974, the Legislature further found that the whole problem of solid waste disposal was growing increasingly acute and that it continued to be seriously exacerbated by the importation of waste from without the State; it determined to and did forbid that any further such waste be brought into the State.[1] The Waste Control Act also au-

1. The Legislature finds and determines that since the enactment of P. L. 1973, c. 39 (C. 13:1I-1 et seq.) the volume of solid and liquid waste continues to rapidly increase, that the treatment and disposal of these wastes continues to pose an even greater threat to the quality of the environment of New Jersey, that the available and appropriate land fill sites within the State are being diminished, that the environment continues to be threatened by the treatment and disposal of waste which originated or was collected outside the State and that the public, health, safety and welfare require that the treatment and disposal within this State of all wastes generated outside of the State be prohibited. [N. J. S. A. 13:1I-9]

No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of

thorized and directed [457] the DEP to promulgate rules and regulations "prohibiting . . . the incineration or landfill of solid waste and the treatment or disposal of liquid wastes within the State which originated or were collected outside the territorial limits of the State." N. J. S. A. 13:1I-4. Both HMDC and DEP promulgated regulations responsive to these legislative enactments, all looking to bar the importation of solid and liquid waste from outside the State.[2]

1. (Cont'd.)
the State, except garbage to be fed to swine in the State of New Jersey, until the commissioner [Commissioner of Environmental Protection] shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State. Any person violating this provision shall be subject to the penalty and enforcement provisions of the "Waste Control Act." P. L. 1973, c. 39. [N. J. S. A. 13:1I-10]

2. The pertinent portions of the HMDC regulations, which became effective September 1, 1973, reads as follows:

> (g) No solid waste originating or collected outside of the territorial jurisdiction of New Jersey shall be disposed of or treated within the Hackensack Meadowlands District. No sanitary landfill operator shall accept for disposal, at a sanitary landfill within the Hackensack Meadowlands District, any solid waste originating or collected outside of the territorial limits of New Jersey.
>
> (h) All operators of sanitary landfills within the Hackensack Meadowlands District shall submit to the Commission [Hackensack Meadowlands Development Commission] . . . a certification stating that no solid waste originating or collected outside of the territorial limits of New Jersey will be accepted for disposal or treatment. [N. J. A. C. 19:7-1.1]

The regulation of the DEP in its present form became effective February 1, 1974 and reads as follows:

> (a) No person shall bring into this State, or accept for disposal in this State, any solid or liquid waste which originated or was collected outside the territorial limits of this State. This Section shall not apply to:
>
> 1. Garbage to be fed to swine in the State of New Jersey;
>
> 2. Any separated waste material, including newsprint, paper, glass and metals, that is free from putrescible materials

[458]

In order to enforce these statutes and rules HMDC and DEP filed a complaint seeking permanently to enjoin Municipal Sanitary Landfill Authority (hereinafter MSLA)[3] from accepting for disposal at its landfill sites any solid waste originating or collected outside of the State's territorial borders.[4] At the same time, with the consent of the defendants, an order to show cause issued with temporary restraints prohibiting MSLA from accepting for disposal out-of-state waste. On the return day of the order to show cause, defendants answered, challenging the constitutionality of both the DEP and HMDC regulations as well as the statutes authorizing their promulgation. Thereafter the City of Yonkers, New York, was granted leave to intervene as a party defendant, as it was

2. (Cont'd.)
and not mixed with other solid or liquid waste that is intended for a recycling or reclamation facility;

> 3. Municipal solid waste to be separated or processed into usable secondary materials, including fuel and heat, at a resource recovery facility provided that not less than 70 per cent of the thru-put of any such facility is to be separated or processed into usable secondary materials; and
>
> 4. Pesticides, hazardous waste, chemical waste, bulk liquid, bulk semi-liquid, which is to be treated, processed or recovered in a solid waste disposal facility which is registered with the Department for such treatment, processing or recovery, other than by disposal on or in the lands of this State. [N. J. A. C. 7:1-4.2]

An earlier DEP regulation was before the trial court in the *Hackensack Meadowlands* case and is set forth in the court's opinion. 127 N. J. Super. at 164, 316 A. 2d 711. It was expressly repealed at the same time that it was superseded by the regulation last above quoted. N. J. A. C. 7:26-1.5.

3. Municipal Sanitary Landfill Authority is a joint venture wholly owned and operated by other named defendants. Its landfill operations are located in the Town of Kearny, within the Hackensack Meadowlands District.

4. Plaintiffs also sought statutory penalties pursuant to N. J. S. A. 13:11-5.

then using an MSLA site to dispose of its municipal refuse. No testimony was taken; the parties relied on affidavits and the transcript of previous [459] proceedings before the Hackensack Meadowlands Commission. In February, 1974, the trial judge filed a written opinion declaring the DEP and HMDC regulations to be in contravention of the Commerce Clause of the United States Constitution and therefore invalid. *Hackensack Meadowlands Development Commission v. Municipal Sanitary Landfill Authority, supra,* 127 N. J. Super. 160, 316 A. 2d 711 (Ch. Div. 1974). Judgment was temporarily stayed and on March 26, the Appellate Division granted plaintiffs' motion for a further stay pending determination of the appeal. Upon application by plaintiffs, this Court granted certification while the appeal was pending unheard in the Appellate Division, R. 2:12-2, 66 N. J. 337 (1974).

In January, 1974, in a separate plenary suit, the City of Philadelphia, together with other plaintiffs mentioned above, filed a complaint seeking a declaration that the Waste Control Act, as well as the regulations promulgated pursuant thereto, violated the Constitutions of both the United States and the State of New Jersey, and further seeking temporary and permanent injunctive relief restraining DEP from enforcing the statutory provisions and from adopting or enforcing regulations intended to be in furtherance of the statutory purpose. On March 25, 1974 the trial judge (not the judge who had heard the *Hackensack Meadowlands* case), on cross-motions for summary judgment, rendered an oral opinion declaring that N. J. S. A. 13:1I-9 and 10 effected an improper discrimination against interstate commerce and were hence unconstitutional. Following the filing of a notice of appeal to the Appellate Division, N. J. 102, 335 A. 2d 55 (1974), and the two actions were brought on for argument and disposition before us at the same time.

We thus face an issue of major public importance, namely, whether the regulations and statutes under review, designed to meet a pressing emergency in the life of the State, are of [460] such a nature as to violate the Commerce Clause, Article I, § 8, clause 3, of the United States Constitution.[5]

II

The Court is acutely aware of the solid waste disposal problem which now exists in the State of New Jersey. Very recently we recognized that it had reached "crisis proportions" due to the increasing scarcity of sites for dumping and landfill. *Southern Ocean Landfill, Inc. v. Mayor and Council of the Township of Ocean,* 64 N. J. 190, 193, 314 A. 2d 65 (1974). The facts presented in the two cases now before this Court, together with the legislative concern with this problem to which we have alluded above and of which more will be said below, serve to reinforce very strongly our consciousness of this extremely serious situation.

The materials constituting the records on these appeals reveal that since the effective date of the creation of HMDC, July 1, 1968, three surveys have been conducted to determine the volume and origin of the solid waste disposed of in the landfills located within HMD. The first survey, mandated by N. J. S. A. 13:17-10(a), found that in 1968 approximately 30,000 tons of solid waste entered HMD each week, of which about 4,000 tons originated outside of New Jersey. The second survey, con-

5. We do not reach the question of the validity of the regulations and statutes when measured against the Privileges and Immunities Clause, Article IV, § 2 of the United States Constitution. The argument for invalidity was found to be totally without merit in the HMDC case, 127 N. J. Super. at 168-69, 316 A. 2d 711, and has not been briefed before us by the parties in either of the two suits.

ducted in 1971, indicated that the total volume of solid waste disposed of in the District had risen to 42,000 tons per week, 5,000 tons of which originated outside of the State. The latest survey, conducted in 1973, revealed further increases to total weekly deposits of 55,000 tons of [461] solid waste, of which about 10,000 tons came from out of state.[6]

On the basis of the 1973 survey, it was estimated by HMDC that the existing landfill sites within HMD had a useful life of about three years, but that a ban on out-of-state refuse would extend their availability by approximately six months. Since the adoption of the ban on out-of-state dumping, the HMDC revised its estimates of the remaining life of the landfills within the HMD. It was calculated that as of January 1, 1974, sanitary landfills within that area had a total life expectancy of about 38 months if the ban were to be continued, but an availability of only 26 months if the ban were to be lifted. Furthermore, there is little chance of reducing the volume of garbage being dumped in the HMD which originates within the State, for the reason, among others, that the Commission has become obligated by statute, N. J. S. A. 13:17-10, to provide solid waste disposal facilities for over 100 New Jersey municipalities.

State-wide, the picture appears much the same. It was estimated that in 1971 over 40,000 tons of solid waste originating out of state was being buried each week in the 340 sanitary landfills then existing within the State. DEP estimated that in that year 1.5 million tons of solid waste originating outside of the State was buried in New Jersey. DEP has also recently computed the total life of the existing sanitary landfill facilities to be about three years in northern New Jersey and approximately ten years in the

6. It was determined that about 6,700 of the 10,000 tons were being disposed of in the three MSLA sites.

southern part of the State. It has also been estimated that a state-wide prohibition on solid waste originating elsewhere would lengthen the state-wide landfill life by approximately 8%, with the increase in some specific landfills being as high as 50 to 100%.

Compounding the shortage problem are other extremely important environmental considerations. Many existing land- [462] fills within the State are located within ecologically sensitive areas, such as floodplains, wetlands, or on State-owned public trust tidelands. The operation of landfills now located in these areas may have to be limited or discontinued. An example of this is the action taken by HMDC in preserving some 1,500 acres of virgin wetlands which had formerly been tentatively designated for use as landfill sites. Further actions of a similar nature are contemplated, thus reducing the estimates of the potential lifespans of such existing facilities.

To obtain a more comprehensive picture of the problem now facing this State, we have taken judicial notice of another report, released in 1972, which has further documented the crisis in this area.[7] According to this report, in 1972 almost 95% of New Jersey's solid waste was disposed of in landfills within the State. Further projections indicate that with the existing landfill acreage and the projected rate of dumping, all land that is presently committed to landfill operations will be exhausted by 1982. Also recognized is the strong probability that other environmental considerations may further limit the use for landfill purposes of much of the existing allocated acreage. Moreover, the HMD is singled out as an area where "[a] critical test of creative solid waste management is now taking place . . . ." The report estimated that by the end of 1975, the supply of acreage available for landfill in the

7. State of New Jersey County and Municipal Government Study Commission, Solid Waste: A Coordinated Approach (1972).

Meadowlands would be exhausted, an estimate very similar to those made by the HMDC and noted earlier in this opinion.

We are also aware that very little has yet been done in any really effective way—on either a national or an interstate level to achieve a satisfactory solution to this pressing problem. The scope of federal legislation is thus far quite limited. The Solid Waste Disposal Act, 42 U. S. C. A. § 3251 *et seq.*, originally provided only for "financial and technical [463] assistance and leadership . . ." to develop new methods to reduce the volume of waste and to provide for economical methods of disposal, 42 U. S. C. A. § 3251(a)(6). The Resource Recovery Act of 1970 amended the Solid Waste Disposal Act to provide financial assistance for the construction of solid waste disposal facilities and to furnish technical and financial assistance to promote and develop new methods of resource recovery. See, *e.g.*, 42 U. S. C. A. §§ 3251(b)(1), 3254b. Although the Act as it now reads also provides for the encouragement of interstate cooperation to resolve the waste disposal problem, 42 U. S. C. A. §§ 3254, 3254a, nothing has been brought to our attention to indicate that New Jersey has entered into any agreement with her neighboring states of New York and Pennsylvania looking to this end.[8]

8. In 1970, the Tri-State Transportation Commission [Connecticut, New York, and New Jersey] published a report entitled *Managing the Natural Environment—A Regional Plan for Water, Sewage, Air and Refuse*. The Commission, interestingly, foresaw the problem with which we are now faced, in its recognition that an interstate solution to the solid waste problem might be difficult to achieve because of increasing resistance to waste "imports." The Commission, therefore, recommended the continued use of landfill sites wherever possible along with regional development of large, efficient incinerators for the cities and inner suburbs. *Id.* at 32. To date, however, the Commission has been ineffective in bringing about the implementation of any of these suggestions.

At the State level there has been more significant activity. In 1970 the Bureau of Solid Waste Management of DEP published the *New Jersey State Solid Waste Management Plan*, which, among other proposals, recommended the creation of "Solid Waste Management Districts."[9] The *Solid Waste Management Plan* has been approved by the Federal Environmental Protection Agency as the official State plan for New Jersey.

Before the release of the *New Jersey Plan* in 1970, the Legislature had enacted the "Incinerator Authorities Law," [464] N. J. S. A. 40:66A-1 *et seq.*, delegating to municipalities the authority to provide solid waste collection and disposal facilities on a local basis. Prior thereto, in 1968, the "Solid Waste Management Authorities Law" had been enacted, N. J. S. A. 40:66A-32 *et seq.*, permitting the governing bodies of one or more municipalities to create solid waste management authorities to construct and operate incinerators and other solid waste treatment facilities. 1970, the year DEP released its *New Jersey Plan*, saw three further related enactments by the Legislature. The "Solid Waste Utility Control Act," N. J. S. A. 48:13A-1 *et seq.*, recognizing the need for state-wide control over the solid waste industry, provided that the Board of Public Utility Commissioners assume the duties of "regulating [the] economic aspects of solid waste collection, disposal and utilization service . . . ." N. J. S. A. 48:13A-2. The "County Solid Waste Disposal Financing Law," N. J. S. A. 40:66A-31.1, *et seq.*, took note of the fact that the cost of constructing disposal facilities would be prohibitive for many municipalities, and delegated to counties the authority to

9. The Plan recommended either a "maximum sanitary landfill strategy" or a "maximum incineration strategy," depending on the availability of sanitary landfill acreage.

purchase or construct such facilities within the county "either alone or jointly with any municipality." N. J. S. A. 40:66A-31.4(1). Finally, the "Solid Waste Management Act," N. J. S. A. 13:1E-1 et seq., provided DEP with the authority to "supervise solid waste collection and disposal facilities or operations," and to plan all future facilities having in mind that they should conform to "reasonably contemplated development of comprehensive community or regional solid waste collection and disposal facilities and operations and to any State-wide, regional, county and intercounty plans for solid waste management," N. J. S. A. 13:1E-4. These statutes are in addition to the Hackensack Meadowlands Reclamation and Development Act and the Waste Control Act that are earlier discussed above.

Supplementing these statutory provisions, the HMDC has recently announced blueprints to phase out all dumping [465] in the Meadowlands by 1979. It is currently planning to construct a baling plant to compact waste into solid, nonflammable building blocks that may then be used as the base of a 2,000 acre meadowlands park located upon existing landfill sites. Also projected is a resource-recovery plant.

Assuming that plans such as these formulated by the HMDC are implemented within the proposed time period, it is entirely reasonable to forecast that the extension of the lifespan of existing landfills, resulting from the exclusion of out-of-state waste, may be of crucial importance in preventing further virgin wetlands or other undeveloped lands from being devoted to landfill purposes. Increasing the lifespan of the HMDC landfills would also alleviate future pressure on other landfills located throughout the State, to accept waste now handled by HMDC, thereby preventing any acceleration of their depletion and preserving

lands in other areas of the State from becoming disposal areas.[10]

III

It is in the light of these facts and with a full realization of the magnitude of the problem, that we address ourselves to the issue as to whether or not the statutes and regulations under attack must fall because they are found to constitute an impermissible burden upon interstate commerce. In both cases now before us the State preliminarily contends that the question of the significance of the burden should not be reached, as the movement of garbage [466] and refuse, things not of commercial value and harmful to the health and welfare of the citizens of the State, does not in fact constitute interstate commerce within the meaning of the constitutional phrase. Therefore, it is argued, any statutes or regulations prohibiting the importation of these deleterious and valueless substances would not violate the Commerce Clause. The HMDC regulations are broadly drawn to exclude all solid wastes collected or originating out-of-state, while the Waste Control Act, through the promulgation of regulations by DEP, has in effects been amended to exclude only that refuse which has no value either for fuel or recycling purposes.

The theory that objects harmful to the general public fall beyond the purview of the Commerce Clause has long been recognized by the United States Supreme Court. Perhaps the best articulation of this doctrine appears in

10. There is every indication that this was the true reason for the enactment of the amendments to the Waste Control Act. (L. 1973, c. 363). Following the promulgation of the regulations banning out-of-state dumping in HMDC, the out-of-state wastes were then carried to smaller landfill sites in New Jersey which had been originally designed to serve only neighboring municipalities. Thus, in order to prevent the total depletion of these landfills, a statewide ban on solid waste imports was enacted.

Bowman v. Chicago & Northwestern Ry. Co., 125 U.S. 465, 8 S. Ct. 689, 31 L. Ed. 700 (1888):

> • • • Doubtless the States have power to provide by law suitable measures to prevent the introduction into the States of articles of trade, which, on account of their existing condition, would bring in and spread disease, pestilence, and death, such as rags or other substances infected with the germs of yellow fever or the virus of smallpox, or cattle or meat or other provisions that are diseased or decayed, or otherwise, from their condition and quality, unfit for human use or consumption. Such articles are not merchantable; they are not legitimate subjects of trade and commerce. They may be rightly outlawed as intrinsically and directly the immediate sources and causes of destruction to human health and life. The self-protecting power of each State, therefore, may be rightly exerted against their introduction, and such exercises of power cannot be considered regulations of commerce prohibited by the Constitution. [125 U. S. at 489, 8 S. Ct. at 700, 31 L. Ed. at 708]

Accord, Baldwin v. Seelig, 294 U. S. 511, 525, 55 S. Ct. 497, 79 L. Ed. 1032, 1039 (1935); *Sligh v. Kirkwood*, 237 U. S. 52, 59-60, 35 S. Ct. 501, 59 L. Ed. 835, 838 (1915). *See Crossman v. Lurman*, 192 U. S. 189, 196-97, 24 S. Ct. 234, 48 L. Ed. 401, 404 (1904); *Plumley v. Massachusetts*, 155 U. S. 461, 468, 472, 15 S. Ct. 154, 39 L. Ed. 223, 225, [467] 227 (1894). Also pertinent to the proposition that garbage or refuse is not an article of interstate commerce is the decision in *Clason v. Indiana*, 306 U. S. 439, 59 S. Ct. 609, 83 L. Ed. 858 (1939). That case involved the validity of an Indiana statute which required that within 24 hours after the death of certain large animals, the owners should burn or bury the carcasses or deliver them to a disposal plant licensed to do business within the state. Transportation for disposal to points outside the state was prohibited. 306 U. S. at 441, 59 S. Ct. 609, 83 L. Ed. at 860. The Supreme Court, after recognizing that the purpose of the statute was not discriminatory, but rather to promote the health of the people, concluded that no impermissible burden on interstate commerce had been shown to exist or as likely to occur. *Id.* at 444, 59 S. Ct. 609, 83 L. Ed. at 862.

The teaching of these cases seems to be that commodities or substances injurious to the public health are not "articles of commerce" within the meaning of the constitutional phrase. Their lack of market value coupled with their immediate threat to human health dictates that such substances not be afforded the protection of the Commerce Clause.

Nevertheless, refuse or solid waste may have intrinsic value of its own. As the trial judge noted in *Hackensack Meadowlands*, ". . . refuse may be utilized for construction, landfill, recycling of paper, bottles and metal, and production of electricity." 127 N. J. Super. at 170, 316 A. 2d at 716. Based on this factor, that court concluded that "the regulations in question here which are directed to the restricted use of sites for New Jersey garbage cannot be sanctioned on the concept that garbage is not a legitimate subject of interstate commerce." *Id.* We readily recognize that modern technology is such that certain types of solid waste may have legitimate market value for recycling or other purposes. We therefore agree with the decision below, insofar as the HMDC regulations are concerned, that they cannot be sustained on the theory that no item of interstate commerce [468] is involved, as these

regulations do clearly attempt to exclude from the HMD even those types of wastes which may have some potentiality of useful renewal.

The amendments to the Waste Control Act, N. J. S. A. 13:1I-9 and 13:1I-10,[11] totally banning the disposal of solid waste originating out-of-state, also fail to make any provision for excepting those types of solid waste which may be renewed. Nevertheless, as we have pointed out, the DEP regulations, issued in response to this legislation, do except from the ban on out-of-state refuse those types of solid waste which may have a value for recycling or for use as fuel.[12] In view of the confining effect of this latter regulation, it is clear that an argument challenging the validity of the Waste Control Act on Commerce Clause grounds, unlike the argument challenging the HMDC regulations, cannot be premised on the existence here of "merchantable" items or legitimate "articles of trade," as those wastes which can be put to effective use are explicitly excepted from the ban. Any assertion that the Commerce Clause applies here must therefore rest on the proposition that the mere transportation and disposal of valueless waste between states constitutes interstate commerce within the meaning of the constitutional provision.

A short time ago, in *United States v. Pennsylvania Refuse Removal Ass'n.*, 242 F. Supp. 794 (E. D. Pa. 1965), *aff'd*, 357 F. 2d 806 (3d Cir.), *cert. denied*, 384 U. S. 961, 86 S. Ct. 1588, 16 L. Ed. 2d 674 (1966), the transportation and disposal of refuse was itself specifically found to constitute interstate commerce. That case was a Sherman

11. Quoted above in footnote 1.

12. DEP was enjoined by the decision below from enforcing these regulations as well as the relevant sections of the Waste Control Act. These regulations are quoted in footnote 2 above.

antitrust action brought against an association of refuse removers in the greater Philadelphia area who collected in Pennsylvania but often dumped in New Jersey. 242 F. [469] Supp. at 796. The District Court found that the government had clearly met its burden of showing that defendants' business was commerce, and was interstate in nature. *Id.* at 796-97. The court emphasized that the real subject of "trade or commerce" was not the worthless garbage that was being transported but rather the valuable service of its removal and disposal. *Id.* at 799.

The *Pennsylvania Refuse* case affords an illustration of the part played by the Commerce Clause as justification for bringing a particular business scheme within the reach of a Congressional regulatory enactment. The Sherman Act purports only to prohibit as illegal *certain* combinations in restraint of trade or commerce, namely, those where the trade or commerce is interstate in nature. This is the *affirmative* aspect of the Commerce Clause—to support some exertion of federal control or regulation. Similarly, persons engaged in a disposal business, interstate in nature, have been found to come within the scope of the federal Fair Labor Standards Act. *Schultz v. Instant Handling, Inc.*, 418 F. 2d 1019 (5th Cir. 1969); *Barnett v. A-1 Scavenger Service Co.*, 466 S. W. 2d 150 (Mo. Ct. App. 1971). But we deal here, in the case before us, with what are customarily called the "negative implications" of the Commerce Clause, the extent to which it may be invoked—not to support an exercise of federal regulation—but rather to strike down or restrict state legislation. The Supreme Court has understandably adopted a very sweeping concept of the Commerce Clause in its affirmative application, in order to further the extent of Congressional control. A much more confined notion of the reach of this provision has, however, been manifested, as we shall see, when it has been invoked to prohibit or limit state action.

IV

Assuming for present purposes that the service of transporting and disposing of solid waste in the factual con- [470] text here presented is in fact interstate commerce in the constitutional sense, we next consider the contention that the relevant sections of the Waste Control Act amount to an improper effort to regulate such commerce since such control lies within the exclusive cognizance of the federal government. In considering this preemption argument in relation to the cases before us, we note initially that in the *Hackensack Meadowlands* case the trial court determined that in this area of solid waste disposal no such preemption is to be found. 127 N. J. Super. at 171, 316 A. 2d 711.

The need to determine whether, in a particular segment of interstate commerce, a state is precluded from acting because of federal preemption is the direct result of the landmark decision of the United States Supreme Court in *Cooley v. Board of Wardens*, 53 U. S. (12 How.) 299, 13 L. Ed. 996 (1851). There the Court for the first time clearly recognized that states have concurrent authority with the federal government to deal with those subjects of interstate commerce which do not necessarily require a national or uniform system of regulation. In a more recent statement appearing in *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U. S. 132, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963), Justice Brennan laid down the rule that a state would be precluded from acting only where either the "nature of the subject matter" or an "explicit declaration of congressional design" indicated that state efforts were to be precluded. *See* 373 U. S. at 143-152, 83 S. Ct. 1210, 10 L. Ed. 2d at 257-62.

The problem which arises in most instances where Congress has acted—as is here the case—results from there

having been a failure on the part of Congress to make clear whether there was or was not a desire and intent on its part to exercise exclusive control in a particular area. The Supreme Court has recognized that "in the final analysis, there can be no one crystal clear distinctly marked formula," *Hines v. Davidowitz*, 312 U. S. 52, 67, 61 S. Ct. 399, 404, 85 L. Ed. 581, 587 (1941), resort to which will in all cases unequivocally reveal Congressional intent. *Benson, The Supreme* [471] *Court and the Commerce Clause*, 1937-1970 at 277-78 (1970).

Fortunately, although Congress has acted in this field through the passage of the Solid Waste Disposal Act of 1965 and its subsequent amendments, it has clearly indicated its intention not to preempt the area. As we have noted earlier, federal legislation has thus far been largely limited to providing "financial and technical assistance and leadership" to develop new methods of disposal and resource recovery and to reduce waste. In the Congressional findings is a pronouncement that "the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies . . . ." 42 U. S. C. A. § 3251(a)(6). We also note that severe budgetary cuts in recent years have reduced federal action even below that originally envisioned in the Solid Waste Disposal Act. For example, the Nixon Administration cut the federal solid waste budget from $30 million in 1973 to a projected $5.8 million for the fiscal year 1974, and sought to restrict the federal role to the control and disposal of hazardous wastes. No further funds were provided for such items as research and development, and technical assistance was substantially curtailed. See Environmental Law Institute, *Federal Environmental Law* 1307-1310 (1974).

It is entirely clear that the case for federal preemption must fail. Congress has encouraged state action; it has not precluded it.

V

In considering whether the statutes and regulations here under scrutiny do or do not constitute an impermissible regulation of interstate commerce, we bear in mind that the Constitution "was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not in division." *Baldwin v. Seelig, supra,* 294 U. S. 511, 523, 55 S. Ct. 497, 500, 79 L. Ed. 1032, 1038 (1935). Primarily the purpose sought to be served by including the Commerce Clause in the Constitution was to check or eliminate the *economic* discrimination among the states that had been so rampant under the Articles of Confederation. *E.g., Baldwin v. Seelig, supra,* 294 U. S. at 521-23, 55 [472] S. Ct. 497, 79 L. Ed. at 1037-38; *H. P. Hood & Sons, Inc. v. DuMond,* 336 U. S. 525, 533-35, 69 S. Ct. 657, 93 L. Ed. 865, 871-72 (1949); *Ribble, State and National Power Over Commerce* 3-4 (1937).

Despite this broad grant of power given Congress by the Commerce Clause, innumerable problems have continuously arisen. This is in large part because the states, in the exercise of their police power to protect the health, welfare and safety of their citizens, have passed many laws which often in effect do directly regulate interstate commerce. Thus over the years the United States Supreme Court has been called upon to arbitrate between these competing demands of state and federal power.

The cases before us present such a situation. We have no difficulty in finding, as did the courts below, that

extending the lifespan of existing landfills and thereby preserving further acreage from use as disposal sites is a legitimate and valid exercise of the police power of the State. Our Appellate Division has recognized that garbage and refuse may provide a direct threat to the public health. *Shaw v. Byram Township,* 86 N. J. Super. 598, 602, 207 A. 2d 570 (App. Div.), certif. denied, 45 N. J. 35, 210 A. 2d 780 (1965) and indeed the point is self-evident. Likewise, the detrimental effects which sanitary landfills have upon the environment have been acknowledged:

> • • • Sanitary landfills conducted on virgin land forever ruin the possibility of preserving the site for conservation. Additionally, such landfill operations can have an adverse effect on the ecological balance of the surrounding area. A sanitary landfill operation also has *severe limiting effects on future development of the property.* Problems of settlement, gas generation, and fires make it difficult to construct structures on former landfill sites. [*Municipal Sanitary Landfill Authority v. Hackensack Meadowlands Development Commission,* 120 N. J. Super. 118, 122, 293 A. 2d 426, 428 (App. Div. 1972); emphasis in original]

[473]

We recognize, and now emphasize, that the objectives of the statutes and regulations in question are not only to preserve the health of New Jersey residents by keeping their exposure to solid waste and landfill areas to a minimum, but also to preserve for the benefit of both present and future generations the natural habitat and ecological values which landfill usage would destroy. The Supreme Court has recognized that the protection of public health through the preservation of the environment is a valid,

and indeed primary, objective of the police power. *Huron Portland Cement Co. v. Detroit*, 362 U. S. 440, 442, 80 S. Ct. 813, 4 L. Ed. 2d 852, 855 (1960). Today it cannot possibly be questioned that the preservation of the environment and the protection of ecological values are, without more, sufficient to warrant an exercise of this power. See, for example, *Adams v. Shannon*, 7 Cal. App. 3d 427, 432, 86 Cal. Rptr. 641, 644 (Ct. App. 1970); Garton, *Ecology and the Police Power*, 16 S. D. L. Rev. 26 (1971).

Thus the underlying issue is whether or not this exercise of residual state power, obviously exerted for legitimate and important purposes, must fail because of the demands of the Commerce Clause. We do not deem it necessary or useful to retrace in any particular detail the history of the negative implications of the Commerce Clause or the manner in which this body of doctrine has evolved through successive decisions of the Supreme Court. Dicta in *Gibbons v. Ogden*, 22 U. S. (9 Wheat.) 1, 209, 6 L. Ed. 23 (1824) suggested that the intent of this grant of power to Congress had been to exclude entirely concomitant action on the part of the states. At least, however, since *Cooley v. Board of Wardens, supra*, 53 U. S. (12 How.) 299, 13 L. Ed. 996 (1851), it has been clear that state legislation will not necessarily be deemed unconstitutional simply because it can be shown that it may have some impact upon commerce that is interstate in nature. Over the years the Supreme Court has applied various tests and has adopted differing approaches in its treatment of the problem as to whether particular state legislation [474] does or does not fall within the interdict of this provision.

In 1938, in the case of *South Carolina State Highway Department v. Barnwell Bros.*, 303 U. S. 177, 58 S. Ct. 510,

82 L. Ed. 734, the Court considered a South Carolina statute that had established size and weight limits for trucks using state highways. The result of enforcing the statute was to exclude many vehicles coming from other states that were engaged in interstate commerce. The Court found that the statute did not violate the Commerce Clause. In commenting upon this case, Professor Engdahl recently observed,

> [T]he court now [in *Barnwell*] formulated better than had been articulated before the test of the negative implications of the commerce clause. In Stone's words, the court is to inquire "whether the state legislature in adopting regulations such as the present has acted within its province, and whether the means or regulation chosen are reasonably adapted to the end sought." 303 U. S. at 190 [58 S. Ct. 510]. [*Engdahl, Constitutional Power: Federal and State* (1974) § 11.03, p. 272]

In addressing the first of these criteria– whether the state legislature has acted within its province–at least two subordinate issues demand attention: can it be said that the subject matter of the legislation has been preempted by Congress, and is the enactment a valid and proper exercise of the state's police power. It was probably implicit in *Barnwell*, as it has been explicit in both earlier and later decisions, that state legislation must also meet a third test –whether the burden imposed on interstate commerce by the state statute exceeds or outweighs the benefit accruing to the state. Recent commentators have questioned whether this third "weighing" test should be, or will continue to be, applied. *Engdahl, op. cit. supra*, § 11.08, pp. 290-94; *Note*, 45 *Univ. of Col. Law Rev.* 487, 489 (1974).

In any event it seems clear that it has not yet been entirely abandoned. *Pike v. Bruce Church,* 397 U. S. 137, 142, 90 S. Ct. 844, 25 L. Ed. 2d 174, 178 (1970). *But see Brotherhood of Loco-* [475] *motive Firemen & Enginemen v. Chicago, Rock Island & Pacific R. R.,* 393 U. S. 129, 89 S. Ct. 323, 21 L. Ed. 2d 289 (1968).

In the case before us it is evident that the New Jersey Legislature—and the agencies that adopted implementing regulations—were looking to the accomplishment of a wholly legitimate end well within their competence. In seeking to prolong the useful lifespan of landfill areas within the state they were ministering to the needs of public health as well as endeavoring to preserve the environment. As we have indicated, there has very clearly been no federal preemption and the legislation is certainly an appropriate exercise of the state's police power. *Cf. Oxford Consumer Discount Co. of North Philadelphia v. Stefanelli,* 102 N. J. Super. 549, 567-574, 246 A. 2d 460 (App. Div. 1968), modified, 104 N. J. Super. 512, 250 A. 2d 593 (App. Div. 1969), further modified, 55 N. J. 489, 262 A. 2d 874 (1970). Nor can it seriously be urged that the means employed were not suitable to the end sought to be attained. Less than total exclusion of solid waste generated outside New Jersey would have been of no avail. Even the means that have been adopted—apparently the best available—offer no certainty of providing more than much needed time within which to devise by technological effort and ingenuity a satisfactory ultimate solution. Nor has there been discrimination, at least in the economic sense. In examining this point we must look to the ends sought to be achieved. Here the purpose of the legislation is to protect the inhabitants and vital resources of New Jersey, not to impose economic barriers or create

commercial restrictions. Nor is there any real or significant discrimination in favor of local collectors. Refuse amassed by them outside the State may not be brought into New Jersey. Conversely, residents of other states are free to collect and dump within the state.

The further step in the testing process would require us to assay the burden on interstate commerce and to weigh it against [476] the benefit to the state. The burden is slight indeed. There is nothing to indicate that adequate alternatives are not available in both New York and Pennsylvania. The City of Yonkers has access to the Croton dump in New York at a modest increase in cost of five dollars per ton. Philadelphia's stated alternatives are either to install adequate air pollution devices in their existing incinerators or to establish new landfill sites outside the city, which would require the purchase of additional disposal trucks. When balanced against the dangers to public health and to the environment that this legislation seeks to avert, these relatively small costs and modest inconveniences seem minor indeed.

Other state and federal courts in very recent years have not hesitated to sustain legislation having as its aim the protection of health and the maintenance of environmental values and natural resources against attacks based upon alleged violations of the Commerce Clause. *American Can Co. v. Oregon Liquor Control Commission,* 15 Or. App. 618, 517 P. 2d 691 (1973) (ban on non-returnable beverage containers); *Proctor & Gamble Co. v. City of Chicago,* 509 F. 2d 69 (7th Cir. 1974), *cert. denied* 421 U. S. 978, 95 S. Ct. 1980, 44 L. Ed. 2d 470 (1975) (ban on phosphate detergents); *Portland Pipe Line Corp. v. Environmental Improvement Commission,* 307 A. 2d 1 (Sup. Jud. Ct. Me. 1973), appeal dismissed, 414 U.S. 1035, 94

S. Ct. 532, 38 L. Ed. 2d 326 (1973) (prevention and control of marine oil spillage); *Construction Industry Association of Sonoma County v. City of Petaluma*, 522 F. 2d 897 (9th Cir. 1975) (ban on further building).[13]

We know that not every hindrance to interstate commerce that may result from a state law will be deemed sufficient to invalidate the legislation. We know too and are constantly becoming more acutely aware that the environmental resources as well as ecological and human values that have [477] become so endangered upon this "plundered planet," insistently demand every reasonable protection that can possibly be recruited.

In this area the state has not only a right to protect its own resources, but also the duty to do so, in the interest of its citizens, as well as others. We are not here concerned with the problem presented in such cases as *West v. Natural Gas Co.*, 221 U.S. 229, 31 S. Ct. 564, 55 L. Ed. 716 (1911) and *Pennsylvania v. West Virginia*, 262 U.S. 553, 43 S. Ct. 658, 67 L. Ed. 1117 (1923). There the Court was called upon to review state statutes restricting the flow of natural gas to citizens of the state in question. Quite understandably it was found that the enactments did violence to the Commerce Clause. In those cases the state effort was to preserve and exploit a resource for selfish economic and commercial gain; here it is to protect the health of its citizens and give some measure of precarious protection to its natural environment. The distinction is clear and it is basic. We know that there resides in each of the severel states a power to protect its natural resources. This power is part of what has been called its quasi-sovereignty. In *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 27 S. Ct. 618, 51 L. Ed. 1038 (1907), the

13. A similar legislative ban on the importation of waste materials has been enacted in the State of Maine. See *Maine Rev. Stat. Ann. Title* 17, § 2253 (Supp. 1974-75).

Supreme Court entertained an original action by the State of Georgia, in which the latter sought to restrain an out-of-state manufacturer from permitting deleterious fumes to be blown into the plaintiff state and do damage to trees, fields and crops. In determining that an injunction would issue, practically as of right, Justice Holmes said,

> The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The state owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a state for an injury to it in its capacity of quasi-sovereign. In that capacity the state has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. [478] It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. [206 U. S. at 237, 27 S. Ct. at 619, 51 L. Ed. at 1044]

It is true that there the Court dealt with a nuisance, which is not present here. Yet, the case has relevant import. The protection to its environment and natural resources that a state can demand of right from a federal court should be equally available to it by way of protective legislation. We do not mean to be understood as saying that every assertion of a state's quasi-sovereign right to protect its environment, ecological values and natural and human resources will be sustained regardless of the impact upon interstate commerce. Clearly this is not so. But where the effect upon trade and commerce is relatively slight, as is here the case, and where at the same time the values

sought to be protected by the state legislation are as crucial to the welfare of its citizens as is here true, we have no hesitancy in sustaining the state action.

The judgments of the respective trial courts are hereby reversed; all stays or injunctive orders are vacated.

For affirmance in both cases: Chief Justice HUGHES, Justices MOUNTAIN, SULLIVAN, PASHMAN and CLIFFORD and Judge COLLESTER—6.

For reversal: None.

APPENDIX B.

SUPREME COURT OF NEW JERSEY
M-434 September Term 1975

CITY OF PHILADELPHIA, et al.,
Plaintiffs-Movants,

and

JOHN P. FAZZIO LANDFILL, INC. t/a
JOHN P. FAZZIO LANDFILL CO., et al.,
Plaintiffs-Intervenors-Respondents,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

This matter having been duly presented to the Court, it is ORDERED that the motion for a remand to the Superior Court, Law Division, for such further proceedings, if any, that that court may deem appropriate is granted; provided, however, that any relief granted by the Law Division shall not include the issuance or continuation of a stay; and it is further

ORDERED that this Court does not retain jurisdiction.

WITNESS, the Honorable Richard J. Hughes, Chief Justice at Trenton, this 11th day of December, 1975.

FLORENCE R. PESKOE,
Clerk.

APPENDIX C.

JAMIESON, McCARDELL, MOORE, PESKIN and SPICER

A Professional Corporation
19 Chancery Lane
Trenton, New Jersey 08618
(609) 396-5511
Attorneys for Plaintiffs-Respondents

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—MERCER COUNTY
Docket No. L-15068-73 P.W.
Civil Action

CITY OF PHILADELPHIA, etc, et al,
Plaintiffs,

v.

STATE OF NEW JERSEY, et al,
Defendants.

ORDER

This matter being opened to the Court by Jamieson, McCardell, Moore, Peskin and Spicer, a Professional Corporation, attorneys for plaintiffs, Herbert F. Moore, Esq. appearing, in the presence of Stephen L. Skillman, Esq., Assistant Attorney General of the State of New Jersey, attorney for defendants, and Vincent J. Dotoli, Esq., attorney for plaintiffs-intervenors, and good cause being shown,

It is on this 19th day of December, 1975:

ORDERED, that Counts II, III, IV, V, VI, VII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII contained in plaintiffs' complaint in lieu of prerogative writs filed in the above captioned matter are hereby dismissed with prejudice; and it is

FURTHER ORDERED, that Counts Two, Three, Four, Five, Six, Seven and Eight of the amended complaint filed by plaintiffs-intervenors in the above captioned matter, are hereby dismissed with prejudice; and it is

FURTHER ORDERED, that, in light of the dismissal of the above counts, and the decision by the New Jersey Supreme Court upholding the constitutionality of *P. L.* 1973, *c.* 363 as representing a valid exercise of the State's police power which does not unreasonably burden interstate commerce and said Court thereby having finally determined Counts I, VIII and XIX of plaintiffs' complaint and Count One of plaintiffs-intervenors complaint, no further proceedings are deemed appropriate by this Court in connection with the above captioned matter.

GEORGE Y. SCHOCH, J. S. C.

William F. Hyland, Attorney General of New Jersey
Attorney for Defendants

By: STEPHEN SKILLMAN
Assistant Attorney General

Consent as to form and entry.
JAMIESON, McCARDELL, MOORE, PESKIN and SPICER, *A Professional Corporation*
Attorneys for Plaintiffs

By: ARTHUR MEISEL
VINCENT J. DOTOLI,
Attorney for Plaintiff-Intervenors

APPENDIX D.

IN THE SUPREME COURT OF THE
STATE OF NEW JERSEY

CITY OF PHILADELPHIA, CITY OF GLEN COVE, LANDFILL AND DEVELOPMENT COMPANY, MAC SANITARY LANDFILL, INC., KINSLEY'S LANDFILL, INC., and DeLORENZO-INTERSTATE WASTE REMOVAL CO., INC. (now INTERSTATE WASTE REMOVAL CO., INC.),

Appellants,

v.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY and RICHARD J. SULLIVAN, Commissioner of the Department of Environmental Protection of the State of New Jersey,

Appellees.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that City of Philadelphia, City of Glen Cove, Landfill and Development Company, MAC Sanitary Landfill, Inc., Kinsley's Landfill, Inc. and DeLorenzo-Interstate Waste Removal Co., Inc. (now Interstate Waste Removal Co., Inc.), the Appellants abovenamed, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey, reversing the trial court's declaration that P. L. 1973, c. 363 unconstitutionally discriminates against interstate commerce, entered in this action on November 18, 1975.

This appeal is taken pursuant to 28 U. S. C. § 1257 (2).

JAMIESON, McCARDELL, MOORE,
PESKIN and SPICER
A Professional Corporation
Counsel for Appellants
by: HERBERT F. MOORE

Dated: January 8, 1976

CERTIFICATE OF SERVICE.

I hereby certify that on this 9th day of January, 1976, a copy of the Notice of Appeal was mailed, with adequate first class postage prepaid, to Assistant Attorney General Stephen Skillman, at his office located in the State House Annex, Trenton, New Jersey, to Vincent J. Dotoli, Esq., attorney for plaintiffs-intervenors at his law office located at Interstate 287 & McKinley Street, Plainfield, New Jersey 07080, and to David N. Samson, Esq., attorney for defendants-respondents in the companion case *Hackensack Meadowlands v. Mun. Landfill Auth.*, A-81 (decided November 18, 1975), at his law office located at 80 Main Street, West Orange, New Jersey 07052.

I further certify that all parties required to be served have been served.

HERBERT F. MOORE.
Herbert F. Moore.

APPENDIX E.

Chapter 363 Laws of N. J. 1973
Approved January 2, 1974.

STATE OF NEW JERSEY

INTRODUCED NOVEMBER 12, 1973

By Senators WALLWORK, HAGEDORN and HIRKALA

(Without Reference)

AN ACT to prohibit any person from bringing into this State any solid and liquid waste which originated or was collected outside the State and supplementing the "Waste Control Act," approved February 21, 1973 (P. L. 1973, c. 39).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and determines that since the enactment of P. L. 1973, c. 39 (C. 13:11-1 et seq.) the volume of solid and liquid waste continues to rapidly increase, that the treatment and disposal of these wastes continues to pose an even greater threat to the quality of the environment of New Jersey, that the available and appropriate land fill sites within the State are being diminished, that the environment continues to be threatened by the treatment and disposal of waste which originated or was collected outside the State, and that the public, health, safety and welfare require that the treatment and disposal within this State of all wastes generated outside of the State be prohibited.

2. No person shall bring into this State any solid or liquid waste which originated or was collected outside the

territorial limits of the State, "*except garbage to be fed to swine in the State of New Jersey,*" until the commissioner shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State. Any person violating this provision shall be subject to the penalty and enforcement provisions of the "Waste Control Act," P. L. 1973, c. 39.

3. This act shall take effect on the first day of the first month following its enactment.

APPENDIX F.

Filed January 22, 1974.

JAMIESON, WALSH, MCCARDELL, MOORE & PESKIN
A Professional Corporation
One West State Street
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(609) 396-5511
Attorneys for Plaintiffs.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY—LAW DIVISION
DOCKET No. L 15068.73 P. W.
Civil Action

CITY OF PHILADELPHIA, a municipal corporation of the Commonwealth of Pennsylvania, CITY OF GLEN COVE, a municipal corporation of the State of New York, LANDFILL AND DEVELOPMENT COMPANY, a New Jersey corporation, MAC SANITARY LANDFILL, INC., a New Jersey Corporation, KINSLEY'S LANDFILL, INC., a New Jersey corporation, and DeLORENZO-INTERSTATE WASTE REMOVAL CO., INC., a New Jersey Corporation,
Plaintiffs,

v.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, and RICHARD J. SULLIVAN, Commissioner of the Department of Environmental Protection of the State of New Jersey,
Defendants.

COMPLAINT
IN LIEU OF PREROGATIVE WRITS.

Plaintiffs, City of Philadelphia, c/o David J. Damiano, Commissioner, Department of Streets, 340 Municipal Services Building, Philadelphia, Pennsylvania, 19107, City of Glen Cove, c/o David Quient, Esq., City Attorney, 5 Highland Road, Glen Cove, New York, 11542, Landfill and Development Company, Route 38, R. D. #1, Mt. Holly, New Jersey, M. A. C. Landfill, Inc., Routes 41 and Clements Bridge Road, Deptford, New Jersey, Kinsley's Landfill, Inc., Routes 41 and 47, Deptford, New Jersey and DeLorenzo-Insterstate Waste Removal Co., Inc., 208 Paterson Avenue, Trenton, New Jersey, in complaining against defendants, say:

COUNT I.

1. Plaintiff landfills are public utilities of the State of New Jersey and hold duly issued temporary certificates of public convenience and necessity issued by the New Jersey Public Utility Commission.

2. Each said landfill duly and timely filed an application with the New Jersey Department of Environmental Protection, Solid Waste Management Bureau, for the issuance of a sanitary landfill registration certificate pursuant to N. J. A. C. 7:26-2.2 &c.

3. Plaintiff Landfill and Development Company operates a sanitary landfill on a tract of land consisting of approximately 200 acres situated in the Townships of Mount Holly, Eastampton and Lumberton in the County of Burlington and State of New Jersey, which landfill site has been leased from plaintiff DeLorenzo-Interstate Waste Removal Co., Inc.

4. Plaintiff M. A. C. Landfill, Inc. operates a sanitary landfill on a tract of land consisting of approximately 87 acres situated in the Township of Deptford, County of Gloucester and State of New Jersey.

5. Plaintiff, Kinsley's Landfill, Inc., operates a sanitary landfill on a tract of land consisting of approximately 380 acres situated in the Township of Deptford, County of Gloucester and State of New Jersey.

6. Each landfill treats and disposes of solid waste which originated or was collected outside the State of New Jersey, including considerable solid waste collected in the City of Philadelphia, Pennsylvania.

7. Plaintiff City of Philadelphia has entered into a written agreement with each of the aforesaid plaintiff landfills for the treatment and disposal of a substantial portion of its sold waste. Plaintiff City of Glen Cove disposes of a substantial portion of the solid waste originating or collected in said city in sanitary landfills located in the State of New Jersey.

8. By virtue of the Solid Waste Management Act (1970), N. J. S. A. 13:1E-1 *et seq.*, the Department of Environmental Protection of the State of New Jersey was granted the power and authority to promulgate rules and regulations governing solid waste disposal in the State of New Jersey.

9. On February 21, 1973, the Governor of the State of New Jersey approved A. 1132 (P. L. 1973, c. 39) known as the Waste Control Act, N. J. S. A. 13:1I-1 *et seq.*

10. Said Act, which became effective March 1, 1973, is entitled as follows:

> AN ACT to control and regulate the treatment and disposal within this State of solid and liquid waste collected outside the State, empowering the Commissioner of Environmental Protection to adopt rules and regulations and prescribing penalties for violations.

11. Pursuant to paragraph 4 of the Waste Control Act, the Commissioner of Environmental Protection is granted the power to prohibit "the incineration or landfill of solid waste and the treatment or disposal of liquid wastes within the State which originated or were collected outside the territorial limits of the State". N. J. S. A. 13:1I-4a.

12. In accordance with the authority conferred by N. J. S. A. 13:1E-1 *et seq.* and N. J. S. A. 13:1I-1 *et seq.*, and as part of a proposed Revision to the Rules of the Bureau of Solid Waste Management, the Commissioner of Environmental Protection proposed as follows:

7:26-1.8 *Out of State Waste*

—1.8.1 No person engaged in the collection and/or haulage of solid waste shall dispose of any solid waste which originated or was collected outside the territorial limits of this State in any solid waste facility located within the territorial limits of this State.

—1.8.2 No person owning or operating a solid waste facility located within the territorial limits of this State shall accept for disposal in such solid waste facility any solid waste which originated or was collected outside the territorial limits of this State.

13. The effect of the aforesaid portion of the proposed rule is to completely prohibit the disposal in the State of New Jersey of any solid waste which originated or was collected outside the territorial limits of the State.

14. The principal basis and background advanced by the Department of Environmental Protection to support the proposed prohibition was to assure the availability of landfill acres in New Jersey for solid waste generated in this State, and was an incident thereto, to stabilize the cost of solid waste collection and disposal for New Jersey residents.

15. The power and authority to regulate the rates and public utility aspects of the solid waste collection and disposal industry has been conferred upon the Board of Public Utility Commissioners pursuant to the Solid Waste Utility Control Act of 1970, N. J. S. A. 48:13A-1 *et seq.*

16. There is no reasonable relationship between the protection of the quality of the environment, on the one hand, and an unlimited prohibition against the importation of solid waste which emanated from outside of New Jersey, on the other hand.

17. There is no qualitative difference between the solid waste which originates or is collected outside the State of New Jersey and that which originates or is collected within the State; and there is no difference with respect to the treatment or disposal of same.

18. The proposed rule prohibiting the disposal of out-of-state waste set forth in paragraph 12 hereof, if adopted and enforced, would be and constitute an undue burden upon interstate commerce in violation of Art. 1, Sec. 8., Cl. 3 of the United States Constitution.

19. The power to regulate the importation of solid and liquid waste originating or collected in another state has been preempted by the Congress of the United States.

20. Plaintiffs will suffer immediate and irreparable injury, loss or damage if the proposed rule prohibiting the importation of out-of-state waste set forth in paragraph 12 hereof is adopted and enforced.

21. In the event plaintiff landfills are prohibited to dispose of solid waste which originated or was collected outside the territorial limits of this State, the continued operation of said sanitary landfills may be and become economically unfeasible, thereby impairing the public interest.

22. Plaintiffs must obtain equitable relief because they do not have an adequate remedy at law.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from adopting proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2.

b. Temporarily and permanently enjoining the enforcement of proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2 in the event the relief prayed for in subparagraph a hereof is not granted and said proposed rules are adopted by the New Jersey Department of Environmental Protection.

c. That this Court declare proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, as same may be adopted, null and void as being unconstitutional on their face or in their application to plaintiffs.

d. That this Court grant costs of suit, and

e. That such other relief be granted by the Court as seems to it just and equitable.

COUNT II.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through 17 inclusive and 20 through 22 of the First Count of the within Complaint and make same a part hereof as if fully set forth herein.

2. The proposed rule prohibiting the disposal of out of state waste set forth in paragraph 12 of the First Count hereof, if adopted, would be and constitute a taking of private property for public use without just compensation in violation of Amendments 5 and 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from adopting proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2.

b. Temporarily and permanently enjoining the enforcement of proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2 in the event the relief prayed for in subparagraph a hereof is not granted and said proposed rules are adopted by the New Jersey Department of Environmental Protection.

c. That this Court declare proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, as same may be adopted, null and void as being unconstitutional on their face or in their application to plaintiffs.

d. That this Court grant costs of suit, and

e. That such other relief be granted by the Court as seems to it just and equitable.

COUNT III.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through 17 inclusive and 20 through 22 of the First Count of the within Complaint and make same a part hereof as if fully set forth herein.

2. The proposed rule prohibiting the disposal of out-of-state waste set forth in paragraph 12 of the First Count hereof, if adopted, would be and constitute a taking of private property for public use without just compensation in violation of Art. 1, Sec. 20 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from adopting proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2.

b. Temporarily and permanently enjoining the enforcement of proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2 in the event the relief prayed for in subparagraph a hereof is not granted and said proposed rules are adopted by the New Jersey Department of Environmental Protection.

c. That this Court declare proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, as same may be adopted, null and void as being unconstitutional on the face or in their application to plaintiffs.

d. That this Court grant costs of suit, and

e. That such other relief be granted by the Court as seems to it just and equitable.

COUNT IV.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through 17 inclusive and 20 through 22 of the First Count of the within Complaint and make same a part hereof as if fully set forth herein.

2. The proposed rule prohibiting the disposal of out-of-state waste set forth in paragraph 12 of the First Count hereof, if adopted, would be and constitute an impairment of the obligation of contracts in violation of Art. 1, Sec. 10, Cl. 1 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and

successors in office from adopting proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2.

b. Temporarily and permanently enjoining the enforcement of proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2 in the event the relief prayed for in subparagraph a hereof is not granted and said proposed rules are adopted by the New Jersey Department of Environmental Protection.

c. That this Court declare proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, as same may be adopted, null and void as being unconstitutional on their face or in their application to plaintiffs.

d. That this Court grant costs of suit, and

e. That such other relief be granted by the Court as seems to it just and equitable.

COUNT V.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through 17 inclusive and 20 through 22 of the First Count of the within Complaint and make same a part hereof as if fully set forth herein.

2. The proposed rule prohibiting the disposal of out-of-state waste set forth in paragraph 12 of the First Count hereof, if adopted, would be and constitute an impairment of the obligation of contracts in violation of Art. 4, Sec. 7, Par. 3 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from adopting proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2.

b. Temporarily and permanently enjoining the enforcement of proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2 in the event the relief prayed for in subparagraph a hereof is not granted and said proposed rules are adopted by the New Jersey Department of Environmental Protection.

c. That this Court declare proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, as same may be adopted, null and void as being unconstitutional on their face or in their application to plaintiffs.

d. That this Court grant costs of suit, and

e. That such other relief be granted by the Court as seems to it just and equitable.

COUNT VI.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through 17 inclusive and 20 through 22 of the First Count of the within Complaint and make same a part hereof as if fully set forth herein.

2. The proposed rule prohibiting the disposal of out-of-state waste set forth in paragraph 12 of the First Count hereof, if adopted, would be and constitute a denial of equal protection of the laws in violation of Amendment 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from adopting proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2.

b. Temporarily and permanently enjoining the enforcement of proposed N. J. A. C. 7:26-1.8.1 and proposed

N. J. A. C.-1.8.2 in the event the relief prayed for in subparagraph a hereof is not granted and said proposed rules are adopted by the New Jersey Department of Environmental Protection.

c. That this Court declare proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, as same may be adopted, null and void as being unconstitutional on their face or in their application to plaintiffs.

d. That this Court grant costs of suit, and

e. That such other relief be granted by the Court as seems to it just and equitable.

COUNT VII.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through 17 inclusive and 20 through 22 of the First Count of the within Complaint and make same a part hereof as if fully set forth herein.

2. The proposed rule prohibiting the disposal of out-of-state waste set forth in paragraph 12 of the First Count hereof, if adopted, would be and constitute an arbitrary, capricious and unreasonable exercise of power by an administrative agency, thereby denying plaintiffs due process of the law in violation of Amendments 5 and 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from adopting proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2.

b. Temporarily and permanently enjoining the enforcement of proposed N. J. A. C. 7:26-1.8.1 and proposed N. J. A. C. 7:26-1.8.2 in the event the relief prayed for in subparagraph a hereof is not granted and said proposed

rules are adopted by the New Jersey Department of Environmental Protection.

c. That this Court declare proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, as same may be adopted, null and void as being unconstitutional on their face or in their application to plaintiffs.

d. That this Court grant costs of suit, and

e. That such other relief be granted by the Court as seems to it just and equitable.

COUNT VIII.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through 17 inclusive of the First Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. The New Jersey Legislature has conferred sweeping authority upon appropriate public bodies to regulate the treatment and disposal of solid waste in New Jersey, for the purpose of assuring a sanitary method of disposing of solid waste and thereby protecting the public health, safety and welfare.

3. N. J. S. A. 26:1A7 provides, in part, that the Public Health Council, established within the Department of Health of the State of New Jersey, shall have power to establish reasonable sanitary regulations, and that the body of regulations so established shall be called the State Sanitary Code.

4. By virtue of said authority and in accordance with the applicable provisions of the Administrative Procedure Act, N. J. S. A. 52:14B-1 *et seq.*, a revision of Chapter VIII of the State Sanitary Code, exclusively concerned with refuse disposal, was adopted by the Public Health Council to become effective July 1, 1970.

5. Section 6 of the Solid Waste Management Act (1970) N. J. S. A. 13:1E-6b provides, in pertinent part, as follows: "All codes, rules and regulations heretofore adopted by the Public Health Council relating to refuse disposal shall continue in full force and effect and be enforceable by the department (of environmental protection), subject to its power as herein provided to amend or repeal the same."

6. By virtue of the authority granted by the applicable provisions of the Solid Waste Management Act (1970), (N. J. S. A. 13:1E-1 *et seq.*) and the Waste Control Act (N. J. S. A. 13:1I-1 *et seq.*) and in accordance with applicable provisions of the Administrative Procedure Act, N. J. S. A. 52:14B-1 *et seq.*, the Department of Environmental Protection held hearings in two parts during December, 1973 on proposed solid waste management regulations.

7. Said proposed regulations do not expressly amend or repeal Chapter VIII of the State Sanitary Code.

8. In addition to the aforesaid, N. J. S. A. 13:1E-17, being a supplement to the Solid Waste Management Act (1970) provides, in pertinent part, as follows: "No ordinances or regulations of any governing body of a municipality or county or board of health more stringent than this act or any rules or regulations promulgated pursuant hereto, and relating to health and environmental protection aspects of solid waste collection or solid waste disposal, shall be superseded by this act."

9. A similar provision with respect to the provisions of the State Sanitary Code was enacted in 1947, N. J. S. A. 26:1A-9.

10. On January 2, 1974, the Governor of the State of New Jersey approved S. 2367 (P. L. 1973, c. 363) being a

supplement to the Waste Control Act, N. J. S. A. 13:1I-1 *et seq.*

11. Said Act, which will become effective February 1, 1974, is entitled as follows:

> An Act to prohibit any person from bringing into this State any solid and liquid waste which originated or was collected outside the State and supplementing the "Waste Control Act," approved February 21, 1973 (P. L. 1973, c. 39).-

12. The text of said Act provides as follows:

> (1) The Legislature finds and determines that since the enactment of P. L. 1973, c. 39 (C. 13:11-1 et seq.) the volume of solid and liquid waste continues to rapidly increase, that the treatment and disposal of these wastes continues to pose an even greater threat to the quality of the environment of New Jersey, that the available and appropriate landfill sites within the State are being diminished, that the environment continues to be threatened by the treatment and disposal of waste which originated or was collected outside the State, and that the public health, safety and welfare require that the treatement and disposal within this State of all wastes generated outside of the State be prohibited.
>
> (2) No person shall bring into this State any solid or liquid waste which originated or was collected outside the territorial limits of the State, except garbage to be fed to swine in the State of New Jersey until the commissioner shall determine that such action can be permitted without endangering the public health, safety and welfare and has promulgated regulations permitting and regulating the treatment and disposal of such waste in this State. Any person violating this provision shall be subject to the penalty and enforcement provisions of the "Waste Control Act," P. L. 1973, c. 39.

13. In enacting a law prohibiting the importation of out-of-state waste, the principal concern of the New Jersey Legislature was to preserve landfill acres in New Jersey for solid waste generated in this State.

14. There is no qualitative difference between the solid waste which originates or is collected outside the State of New Jersey and that which originates or is collected within this State; and there is no difference with respect to the treatement or disposal of same.

15. There is no reasonable relationship between the protection of the quality of the environment, on the one hand, and the unlimited prohibition against the importation of solid waste which emanated from outside of New Jersey, on the other hand.

16. Inasmuch as the disposal of solid waste is a problem of national scope and concern, the Congress of the United States has directed the Secretary of Health, Education and Welfare to encourage interstate and interlocal cooperation in connection with solid waste disposal problems. 42 U. S. C. A. § 3254.

17. P. L. 1973, c. 363 constitutes an undue burden upon interstate commerce in violation of Art. 1, Sec. 8, Cl. 3 of the United States Constitution.

18. The power to regulate the importation of solid and liquid waste originating or collected in another state has been preempted by the Congress of the United States.

19. Plaintiffs repeat the allegations contained in paragraphs 20 through 22 inclusive of the First Count of the within Complaint and make same a part hereof as if fully set forth herein.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT IX.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive, and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363 constitutes the taking of private property for public use without just compensation in violation of Amendment 5 and Amendment 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT X.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363, constitutes the taking of private property for public use without just compensation in viclation of Art. 1, Sec. 20 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XI.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363 constitutes an impairment of the obligation of contracts, in violation of Art. 1, Sec. 10, Cl. 1 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XII.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363 constitutes an impairment of the obligation of contract in violation of Art. 4, Sec. 7, par. 3 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XIII.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. Inasmuch as more than one object is embraced by P. L. 1973, c. 363, said enactment violates Art. 4, Sec. 7, Par. 4 of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XIV.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. Section 2 of P. L. 1973, c. 363 contains an unconstitutional delegation of legislative power in violation of Amendment 14 of the United States Constitution, and Art. 4, Sec. 1, Par. 1, of the New Jersey Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XV.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363 is so vague and uncertain as to deny plaintiffs due process of the law in violation of Amendments 5 and 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XVI.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363 is violative of due process of the law as constituting an arbitrary, capricious and unreasonable exercise of power by the Legislature, as provided in Amendments 5 and 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XVII.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363 is void for failure to provide adequate standards to an administrative agency in violation of Amendments 5 and 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XVIII.

1. Plaintiffs repeat each and every allegation contained in paragraphs one through sixteen inclusive and nineteen of the Eighth Count of the within Complaint, and make same a part hereof as if fully set forth herein.

2. P. L. 1973, c. 363 constitutes a denial of equal protection of the laws in violation of Amendment 14 of the United States Constitution.

WHEREFORE, plaintiffs demand judgment:

a. Temporarily and permanently enjoining defendants and their deputies, agents, employees, servants and successors in office from enforcing P. L. 1973, c. 363; and

b. That this Court declare P. L. 1973, c. 363 null and void as being unconstitutional on its face or in its application to plaintiffs.

c. That this Court grant costs of suit; and

d. That such other relief be granted by the Court as seems to it just and equitable.

COUNT XIX.

1. N. J. S. A. 13:1I-4a provides as follows:
The commissioner shall have the power to formulate and promulgate, amend and repeal orders, rules and regulations prohibiting, conditioning and controlling the incineration or landfill of solid waste and the treatment or disposal of liquid wastes within the State which originated or were collected outside the territorial limits of the State.

2. The power to prohibit, as distinguished from the power to regulate, the incineration or landfill of solid waste and the treatment or disposal of liquid waste has been preempted by the federal government.

WHEREFORE, plaintiffs demand judgment:

a. Declaring the grant of power to prohibit the treatment or disposal of solid and liquid waste contained in N. J. S. A. 13:1I-4a unconstitutional.

b. That this Court grant costs of suit; and

c. That such other relief be granted by the Court as seems to it just and equitable.

Jamieson, Walsh, McCardell, Moore & Peskin
A Professional Corporation
By /s/ HERBERT F. MOORE
Herbert F. Moore

APPENDIX G.

Affidavit of Richard A. Peluso, Dated January 16, 1974.

A Professional Corporation
JAMIESON, WALSH, MCCARDELL, MOORE AND PESKIN
One West State Street
Trenton, N. J. 08608
(609) 396-5511
Attorneys for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION
CIVIL ACTION

City of Philadelphia, a municipal corp. of the Commonwealth of Pa., City of Glen Cove a municipal corp. of the State of N. Y., Landfill and Development Company, a N. J. corp., M. A. C. Landfill, Inc., a N. J. corp. & DeLorenzo-Interstate Waste Removal Co., Inc., a N. J. corp.,

Plaintiffs

v.

State of New Jersey, Department of Environmental Protection of the State of New Jersey, and Richard J. Sullivan, Commissioner of the Department of Environmental Protection of the State of New Jersey,

Defendants.

AFFIDAVIT

STATE OF NEW JERSEY }
COUNTY OF MERCER } *ss.:*

RICHARD A. PELUSO, of full age, being duly sworn according to law, deposes and says:

1. I am a professional engineer licensed to practice in the State of New Jersey.

2. I hold a master's degree in Environmental Engineering, and have completed almost all course work toward a doctor's degree in said field.

3. The transportation in New Jersey of solid waste in accordance with the terms and provisions of applicable Federal and New Jersey state and administrative laws, rules and regulations is not hazardous to the public health and does not constitute a threat to the health, welfare or safety of the residents of the State of New Jersey.

4. The treatment and disposal in New Jersey of domestic or foreign solid waste in accordance with the terms and provisions of applicable Federal and New Jersey state and administrative laws, rules and regulations is not hazardous to the public health and does not constitute a threat to the health, welfare or safety of the residents of the State of New Jersey.

5. As a general rule, there is a direct relationship between the length of time consumed in bringing a sanitary landfill to final grade including placement of the final impermeable cover thereon, and the potential for environmental pollution.

6. If the effect of P. L. 1973, c. 363, or proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2 is to reduce the volume of solid waste treated and disposed of in New

Jersey and thereby extend the time within which landfills are brought to final grade and final cover then such statute and proposed rules may have the effect of increasing, rather than decreasing such danger as may exist to the quality of the environment.

7. In the event the court would grant restraints enjoining the enforcement of P. L. 1973, c. 363, or the adoption or enforcement of proposed N. J. A. C. 7:26-1.8.1 and N. J. A. C. 7:26-1.8.2, the public health, welfare and safety would in no way be jeopardized provided said waste continued to be treated and disposed of in accordance with the terms of applicable Federal and New Jersey state and administrative laws, rules and regulations.

RICHARD A. PELUSO
Richard A. Peluso

Sworn to and Subscribed before me this 16th day of January, 1974.

HERBERT F. MOORE
Herbert F. Moore
Attorney at Law of New Jersey

APPENDIX H.

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
TRENTON

WILLIAM T. CAHILL
Governor

RICHARD W. DEKORTE
Counsel to the Governor

December 26, 1973

David Quient, Esq.
City Attorney
City Hall
Glen Cove, New York 11542

Re: Jamaica Ash & Rubbish Removal Co. Inc.

Dear Mr. Quient:

Governor Cahill has asked me to reply to your letter of December 18, 1973 with respect to the letter of December 11, 1973 addressed to the Governor from the firm of Rosenberg, Rosenberg & Rockman. The subject matter of that letter apparently refers to Senate Bill No. 2367 (OCR), currently before the Governor for his review. Enclosed is a copy of that bill for your information.

This bill grants to the Commissioner of Environmental Protection the power to promulgate regulations to permit certain types of solid and liquid waste to be disposed of in the State of New Jersey. May I suggest, therefore, that you review the regulations of the Department, both promulgated and pending, to determine the status of the rubbish removal program of the City of Glen Cove.

Also, I might add that Senate Bill No. 2367 (OCR) would not have been introduced had the sister states of

New Jersey permitted solid wastes originating in their states to be disposed of at or near the point of origination.

Very truly yours,

RICHARD W. DEKORTE
Counsel to the Governor

Encl.
cc: Richard J. Sullivan, Commissioner
Dept. of Environmental Protection
Rosenberg, Rosenberg & Rockman

APPENDIX I.

JAMIESON, WALSH, McCARDELL,
MOORE and PESKIN
A PROFESSIONAL CORPORATION
One West State Street
Trenton, N. J. 08608
(609) 396-5511
Attorneys for Plaintiff

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY – LAW DIVISION
Docket No. L-15068-73 P. W.
CIVIL ACTION

CITY OF PHILADELPHIA, a municipal corp. of the Commonwealth of Pa., CITY OF GLEN COVE, a municipal corp. of the State of N. Y., LANDFILL and DEVELOPMENT COMPANY, a N. J. corp., MAC SANITARY LANDFILL, INC., a N. J. corp., KINSLEY'S LANDFILL, INC., a N. J. corp. & DeLORENZO-INTERSTATE WASTE REMOVAL CO., INC., a N. J. corp.,

Plaintiffs

v.

STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE STATE OF NEW JERSEY, and RICHARD J. SULLIVAN, Commissioner of the Department of Environmental Protection of the State of New Jersey,

Defendants.

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS.

This matter being opened to the Court by Jamieson, Walsh, McCardell, Moore and Peskin, a Professional Cor-

poration, by Arthur Meisel, Esquire, attorneys of the plaintiffs, notice having been informally given to the Office of the Attorney General of New Jersey, and it appearing to the Court from the duly verified complaint and the affidavits annexed thereto that immediate and irreparable damage will probably result to the plaintiffs before a hearing can be had on an application for a temporary restraining order in this action:

It is on this 21st day of January, 1974,

ORDERED, that the defendants show cause before the Superior Court, Law Division, at the Mercer County Court House, South Broad and Market Streets, Trenton, N.J. on the 1st day of February, 1974 at 1:30 o'clock in the afternoon or as soon thereafter as counsel can be heard why an injunctive order should not be issued restraining and enjoining the defendants according to the demand of the complaint until the final hearing of this action.

IT IS FURTHER ORDERED, that the defendant, Richard J. Sullivan, Commissioner of the Department of Environmental Protection of the State of New Jersey and the said Department of Environmental Protection shall desist and refrain from adopting sections 7:26-1.8.1 and 7:26-1.8.2 of the proposed Revision to the Rules of the Bureau of Solid Waste Management and that the State of New Jersey desist and refrain from enforcing the provisions of P. L. 1973, c. 363 until the constitutionality of same has been determined, and that said restraints apply to defendants and their agents, employees, servants and attorneys.

IT IS FURTHER ORDERED, that the defendants have leave to move for a dissolution or modification of the restraints hereby imposed on 2 days notice to the plaintiffs.

IT IS FURTHER ORDERED, that true but uncertified copies of the complaint and the affidavits attached thereto and of this order be served upon the defendants within 2 days from the date hereof.

GEORGE Y. SCHOCH

J. S. C.

APPENDIX J.

SUBCHAPTER 4. IMPORTATION OF SOLID AND LIQUID WASTE FROM OUTSIDE NEW JERSEY

Authority

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority delegated at Chapter 363 of the Public Laws of 1973 and were filed January 18, 1974, as R. 1974 d. 10 to become effective February 1, 1974. See: 6 N. J. R. 58(a).

7:1-4.1 Definitions

The following words and terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Bulk liquid" or "bulk semi-liquid" means liquid or semi-liquid in the quantity of 55 gallons or more.

"Chemical waste" means discarded material resulting from any manufacturing process or other procedure which is or can become chemically active.

"Department" means the Department of Environmental Protection.

"Hazardous waste" means any waste or combination of wastes which pose a substantial present or potential hazard to human health or living organisms, because they can be biologically magnified, or because they can be lethal, or because they may otherwise cause detrimental cumulative effects. They shall include waste materials that are:

1. Toxic or poisonous;

2. Corrosive;

3. Irritating or sensitizing;

4. Radioactive;

5. Biologically infectious;

6. Explosive;

7. Flammable; and

8. Present a significant hazard to human health and/or the environment. They include, but are not limited to, those materials and concentrations of materials that are determined to be toxic by the Federal Secretary of Health, Education and Welfare pursuant to section 20(6) of the Occupational Safety and Health Act of 1970 (Public Law 91-596) and those listed in Part 172, Title 49 of the Code of Federal Regulations issued by the Federal Department of Transportation.

"Liquid waste" means any waste which exists in the liquid state at standard conditions (70 degrees Fahrenheit and 29.92 in hydrargyrum).

"Pesticide" means any substance or mixture of substances labeled, designed, intended for or capable of use in preventing, destroying, repelling, sterilizing or mitigating any insects, rodents, nematodes, predatory animals, fungi, weeds and other forms of plant or animal life or viruses, except viruses on or in living man or other animals. The term "pesticide" shall also include any substance or mixture of substances labeled, designed or intended for use as a defoliant, desicant or plant regulator.

"Recycling or reclamation facility" means any place, equipment, or plant designed or operated to collect, store or process and to redistribute separated materials so as to return the material to the raw materials market.

"Resource recovery facility" means any place, equipment, or plant designed and operated to separate or process municipal solid waste into usable secondary materials, including fuel and heat.

"Secondary material" means previously used raw material.

"Semi-liquid" mean solid matter in a liquid media (for example, a slurry).

"Solid waste" means garbage refuse, sludge and other discarded solid materials resulting from industrial, commercial and agriculture operations and from community activities, and all other waste materials including liquids disposed of incident thereto except solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare and feed such wastes to swine on their own farms.

7:1-4.2 Out-of-State waste

(a) No person shall bring into this State, or accept for disposal in this State, any solid or liquid waste which originated or was collected outside the territorial limits of this State. This Section shall not apply to:

1. Garbage to be fed to swine in the State of New Jersey;

2. Any separated waste material, including newsprint, paper, glass and metals, that is free from putrescible materials and not mixed with other solid or liquid waste that is intended for a recycling or reclamation facility;

3. Municipal solid waste to be separated or processed into usable secondary materials, including fuel and heat, at a resource recovery facility provided that not less than 70 per cent of the thru-put of any such facility is to be

separated or processed into usable secondary materials; and

4. Pesticides, hazardous waste, chemical waste, bulk liquid, bulk semi-liquid, which is to be treated, processed or recovered in a solid waste disposal facility which is registered with the Department for such treatment, processing or recovery, other than by disposal on or in the lands of this State.

7:1-4.3 Effective date

These rules shall take effect on February 1, 1974.

APPENDIX K.

Filed February 5, 1974

JAMIESON, WALSH, MCCARDELL, MOORE AND PESKIN
A Professional Corporation
One West State Street
Trenton, N. J. 08608
(609) 396-5511
Attorneys for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION
Docket No. L-15068-73 P. W.

CIVIL ACTION

CITY OF PHILADELPHIA, etc., et al.,
Plaintiffs,

v.

STATE OF NEW JERSEY, et al.,
Defendants.

ORDER GRANTING INTERLOCUTORY INJUNCTION.

This matter being opened to the Court by Jamieson, Walsh, McCardell, Moore and Peskin, a Professional Corporation, by Herbert F. Moore, Esq., attorneys for plaintiffs, and in the presence of Joseph M. Clayton, Jr., Deputy Attorney General of the State of New Jersey, attorney for defendants, and the Court having considered the complaint and affidavits attached thereto and the answer filed on behalf of the defendants, and having heard the arguments of the respective counsel, and being satisfied that the plaintiffs are entitled to an order restraining defendants as demanded.

And it appearing that the Order to Show Cause made on the 25th day of January, 1974 has been duly served as therein directed,

It is on this 1st day of Febr., 1974,

ORDERED, that the State of New Jersey shall desist and refrain from enforcing the provisions of P. L. 1973, c. 363;

IT IS FURTHER ORDERED, that Richard J. Sullivan, Commissioner of the Department of Environmental Protection of the State of New Jersey and the said Department of Environmental Protection shall desist and refrain from adopting Sections 7:26-1.8.1 and 7:26-1.8.2 of the proposed Revision to the Rules of the Bureau of Solid Waste Management;

IT IS FURTHER ORDERED, that the said Commissioner and Department shall desist and refrain from enforcing N. J. A. C. 7:1-4;

IT IS FURTHER ORDERED, that the said Commissioner and Department shall desist and refrain from adopting any rule or administrative order, of any nature or description, which would prohibit the treatment or disposal in New Jersey of solid waste collected or originating in another state, or which would prohibit transportation of such waste into this state for disposal purposes;

IT IS FURTHER ORDERED, that the restraints contained herein shall apply to the aforesaid defendants and their agents, employees, servants and attorneys until the further order of this Court.

/s/ GEORGE Y. SCHOCH
George Y. Schoch, A. J. S. C.

APPENDIX L.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION

CIVIL ACTION

City of Philadelphia, a municipal corp. of the Commonwealth of Pa., City of Glen Cove, a municipal corp. of the State of N. Y., Landfill and Development Company, a N. J. corp., M. A. C. Landfill, Inc., a N. J. corp., Kinsley's Landfill, Inc., a N. J. corp. & DeLorenzo-Interstate Waste Removal Co., Inc., a N. J. corp.,

Plaintiffs

v.

State of New Jersey, Department of Environmental Protection of the State of New Jersey, and Richard J. Sullivan, Commissioner of the Department of Environmental Protection of the State of New Jersey,

Defendants.

AFFIDAVIT.

DISTRICT OF COLUMBIA } *ss.:*

ARSEN J. DARNAY, of full age, being duly sworn according to law, deposes and says:

1. I am the Deputy Assistant Administrator for Solid Waste Management Programs, Environmental Protection Agency.

2. The statements on the attached letter to Mr. Herbert F. Moore dated January 29, 1974 are all true to my personal knowledge.

ARSEN J. DARNAY
Arsen J. Darnay

Sworn to and Subscribed before me this 29 day of January, 1974.

A. BLAKEMAN EARLY
A. Blakeman Early
Attorney at Law of the District of Columbia

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
WASHINGTON, D. C. 20460

Mr. Herbert F. Moore, Esq.
Jamieson, Walsh, McCardell, Moore and Peskin
One West State Street
Trenton, New Jersey 08608

Dear Mr. Moore:

In connection with current litigation in which you are engaged with the State of New Jersey, you have requested a statement of this Agency's position on the legislative action by the State of New Jersey which will prohibit as of February 1, 1974, the importation into the State of any solid or liquid waste originating or collected outside the State. I understand also that the State has adopted under its emergency procedures implementing regulations which with some narrow exceptions, will ban importation for land disposal of any such waste. Thus, it would appear that the treatment and disposal within New Jersey of most wastes generated outside the State will be illegal and subject to severe enforcement penalties as of February 1, 1974.

It has not been established to the satisfaction of EPA that the continuation of disposal, in an environmentally sound manner, of solid waste generated outside New Jersey poses any greater immediate health threat to its citizens than the continued disposal of domestically generated solid waste. Therefore, there appears to be no immediate health threat to justify the precipitious passage and implementation of this statute and these regulations.

If this statute and implementing regulations are allowed to become effective February 1, the City of Philadelphia would significantly increase and continue the incineration of its solid waste. The incineration of such quantities of solid waste would result in the emission of particulate matter in violation of health related air quality standards and the Clean Air Act of 1970. (See Affidavit of Mr. David J. Damiano, Commissioner of Streets, City of Philadelphia, page 3.)

Representatives of EPA have testified on two occasions on other proposals to ban the importation and disposal in New Jersey of out-of-state wastes. Copies of the statements of Meyer Scolnick before the Hackensack Meadowlands Development Commission on June 18, 1973, and of John A. Ruf before the New Jersey Department of Environmental Protection on December 13, 1973, are enclosed. These statements, together with this letter, represent the position of the Environmental Protection Agency. Copies will be distributed to the State and to others who have expressed an interest in this matter.

In brief, EPA's position is that a State importation ban such as that enacted by New Jersey is in conflict with the national policy set forth in Section 206 of the Solid Waste Disposal Act, the administration of which law is an EPA responsibility. The EPA Administrator is charged with encouraging (1) cooperative activities by the States and local governments in connection with solid waste disposal programs; (2) interstate, inter-local, and regional planning for, and the conduct of, interstate, inter-local and regional waste disposal programs; and (3) the enactment of improved and, so far as practical, uniform state and local laws governing solid waste disposal. The New Jersey legislation will work at cross purposes with the plans and goals EPA is striving to implement under the role given to it by the Solid Waste Disposal Act. Moreover, the continuation of such a restriction would establish an unfavorable precedent which, if followed by a substantial number

of other States, would render regional and interstate solutions to solid waste disposal problems impossible to attain.

While the concerns of the several States as to the growing scarcity of landfill disposal sites are understandable, restrictions on out-of-state wastes reflect a narrow, parochial view without due regard to more significant problems and values involved in the national policy in favor of regional planning for solid waste disposal consistent with the achievement of environmental quality goals on a regional basis in this and the related environmental areas in which EPA is making efforts to combat water pollution under the Federal Water Pollution Control Act Amendments of 1972 and air pollution under the Clean Air Act. Environmental planning in the opinion of this Agency means regional planning and not restrictive legislation by a jurisdictional entity in its own short-range self interest. This means that solid waste processing and disposal facilities should be planned, designed and constructed so as to serve "waste sheds" which may encompass more than one city or State, and not merely the jurisdictional entity in which it is located or in which the waste is generated.

The foregoing is not to say that appropriate standards should not be applied in the areas of treatment and disposal of solid wastes and of land use planning. We strongly favor the adoption of standards applicable to domestic and imported solid wastes so that they apply on an equal basis with out-of-state waste subject to the same statutory and regulatory treatment as domestic waste.

The control of available landfill sites development in light of land use planning as reflected in State laws, regulations and policies in such areas as "wetlands" preservation, area development (such as in the Hackensack Meadowlands), open-space, recreational, agricultural and

park area designations and zoning and growth development planning are admirable efforts of environmental control provided such efforts take into account the total environmental picture and address the significant problems of air quality, water quality, waste water treatment as well as solid waste treatment and disposal. A single thrust to ban out-of-state wastes impedes rather than enhances environmental quality.

In conclusion, it is EPA policy that no municipality or State should take action to prevent the free flow of waste across municipal or state boundaries provided the transport, processing, and disposition of the waste is in accordance with the provisions of applicable federal and state environmental and land use laws, guidelines, regulations, and recognized engineering practices.

Sincerely yours,

ARSEN J. DARNAY
Arsen J. Darnay
Deputy Assistant Administrator
for Solid Waste Management Programs
(HM-562)

APPENDIX M.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants
State House Annex
Trenton, New Jersey 08625

By: Joseph M. Clayton, Jr.
Deputy Attorney General
(609) 292-6597

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY
Docket No. L-15068-73 P. W.
Civil Action

CITY OF PHILADELPHIA, etc. et al,
Plaintiffs,

v.

STATE OF NEW JERSEY, et al,
Defendants.

ANSWER

Defendants, by way of answer to the complaint in the above captioned matter, say:

COUNT 1.

1. The allegations contained in Paragraphs 1 through 6 of the First Count of the Complaint are admitted.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the First Count of the Complaint.

3. The Solid Waste Management Act referred to in Paragraph 8 of the First Count of the Complaint speaks for itself.

4. The allegations contained in Paragraph 9 of the First Count of the Complaint are admitted.

5. With respect to the allegations contained in Paragraphs 10 and 11 of the First Count of the Complaint, the Waste Control Act (L. 1973, c. 39) speaks for itself.

6. Defendants admit the allegations contained in Paragraphs 12, 13 and 14 of the First Count of the Complaint; however, said regulations (N. J. A. C. 7:26-1.8.1 and 1.8.2) have been superseded by L. 1973, c. 363, and said regulations will not be adopted by the Department.

7. The Solid Waste Utility Control Act referred to in Paragraph 15 of the First Count of the Complaint speaks for itself.

8. The allegations contained in Paragraph 16 of the First Count of the Complaint are denied.

9. The allegations contained in Paragraph 17 of the First Count of the Complaint are admitted.

10. The allegations contained in Paragraph 18 of the First Count of the Complaint are denied.

11. The allegations contained in Paragraph 19 of the First Count of the Complaint are denied.

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the First Count of the Complaint.

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the First Count of the Complaint.

14. The allegations contained in Paragraph 22 of the First Count of the Complaint are denied.

COUNT 2.

1. Defendants repeat their answer to the First Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Pragraph 2 of the Second Count of the Complaint are denied.

COUNT 3.

1. Defendants repeat their answers to the First Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Third Count of the Complaint are denied.

COUNT 4.

1. Defendants repeat their answers to the First Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Fourth Count of the Complaint are denied.

COUNT 5.

1. Defendants repeat their answers to the First Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Fifth Count of the Complaint are denied.

COUNT 6.

1. Defendants repeat their answers to the First Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Sixth Count of the Complaint are denied.

COUNT 7.

1. Defendants repeat their answers to the First Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Seventh Count of the Complaint are denied.

COUNT 8.

1. Defendants repeat their answers to the First Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraphs 2 through 12 of the Eighth Count of the Complaint are admitted, except that the various laws of the State of New Jersey referred to in said allegations speak for themselves.

3. Defendants admit that the preservation of additional landfill acres for solid waste generated in New Jersey was one of the reasons for the enactment of a ban on the disposal in New Jersey of waste originating outside the State.

4. The allegations contained in Paragraph 14 of the Eighth Count of the Complaint are admitted.

5. The allegations contained in Paragraph 15 of the Eighth Count of the Complaint are denied.

6. The laws of the United States, specifically 42 U. S. C., § 3254, speak for themselves.

7. The allegations contained in Paragraph 17 of the Eighth Count of the Complaint are denied.

8. The allegations contained in Paragraph 18 of the Eighth Count of the Complaint are denied.

9. Defendants repeat their answers to the allegations contained in Paragraphs 20 through 22 of the First Count of the Complaint and incorporate same herein by reference.

COUNT 9.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Ninth Count of the Complaint are denied.

COUNT 10.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Tenth Count of the Complaint are denied.

COUNT 11.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Eleventh Count of the Complaint are denied.

COUNT 12.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Twelfth Count of the Complaint are denied.

COUNT 13.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Thirteenth Count of the Complaint are denied.

COUNT 14.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Fourteenth Count of the Complaint are denied.

COUNT 15.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Fifteenth Count of the Complaint are denied.

COUNT 16.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Sixteenth Count of the Complaint are denied.

COUNT 17.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Seventeenth Count of the Complaint are denied.

COUNT 18.

1. Defendants repeat their answers to the Eighth Count of the Complaint and incorporate same herein by reference.

2. The allegations contained in Paragraph 2 of the Eighteenth Count of the Complaint are denied.

COUNT 19.

1. N. J. S. A. 13:1I-4(a) speaks for itself.

2. The allegations contained in Paragraph 2 of the Nineteenth Count of the Complaint are denied.

FIRST SEPARATE DEFENSE.

The complaint fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE.

To the extent that the complaint constitutes a challenge to the administrative regulations adopted by the Department of Environmental Protection, the Superior Court, Law Division, lacks jurisdiction over the subject matter thereof.

THIRD SEPARATE DEFENSE.

The enactment of L. 1973, c. 363 has superseded the proposed regulations referred to in the complaint as

N. J. A. C. 7:26-1.8.1 and 1.8.2. The Department has indicated its intent to not adopt those proposed regulations. Thus the allegations with respect to those regulations are moot.

FOURTH SEPARATE DEFENSE.

Plaintiffs have failed to exhaust their administrative remedies.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants
JOSEPH M. CLAYTON, JR.
Joseph M. Clayton, Jr.
Deputy Attorney General

I hereby certify that the within pleading has been served within the time prescribed by Rule 4:6.

JOSEPH M. CLAYTON, JR.
Joseph M. Clayton, Jr.
Deputy Attorney General

APPENDIX N.

RULES OF THE BUREAU OF SOLID WASTE MANAGEMENT
N. J. A. C. 7:26-1 et seq.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
David J. Bardin, Commissioner

Effective July 1, 1974

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ADOPTION OF RULE REVISION
BUREAU OF SOLID WASTE MANAGEMENT

As Commissioner of the Department of Environmental Protection, in accordance with N. J. S. A. 13:1E-1 et seq., I have promulgated new Rules of the Bureau of Solid Waste Management (N. J. A. C. 7:26-1 et seq.). These rules replace the 1970 Rules known as N. J. A. C. 7:26-1 (formerly Chapter VIII—Refuse Disposal, a chapter of the New Jersey State Sanitary Code, adopted April 30, 1970 by the Public Health Council). The new rules have an effective date of July 1, 1974 and govern disposal, collection/haulage and fees.

Legal notice of the proposed regulations and the public hearing concerning them, as required by law, was given November 8, 1973. The public hearings were held on December 11, 1973, December 13, 1973, January 21, 1974, January 23, 1974, and January 25, 1974, during which eighty-five (85) organizations and private citizens testified. In response to public testimony, 140 out of 335 subsections were altered. Most of the revisions consisted of rewording to clarify the intent of the regulations; some

were made less restrictive because they were found to be more stringent than necessary. No rule was altered in such a way as to provide less protection to the public health, safety or welfare than provided by the Chapter VIII regulations. Richard D. Goodenough, Director of the Division of Environmental Quality solicited opinions from approximately 120 organizations, agencies and individuals (including all 85 who testified at the public hearings) on the draft revisions of May 15, 1974. Nineteen responses were received; four recommended adoption as revised, five recommended adoption with some minor changes, three recommended adoption with more stringent requirements, six recommended major (less restrictive) changes before adoption, and one was against the adoption of any new rules. Nine sub-sections of the May 15th draft have been reworded, three have been deleted and the definition of the word "putrescible" was added.

We do not now adopt the proposed sub-section requiring that, "no registration for a new facility shall be approved which would be in conflict with existing state, county or regional plans", pending further progress on regional solid waste planning. Language with respect to the concept of regionalization and applicability of these rules will be proposed at a later date.

In addition to the need for specific guidelines and criteria concerning regional plans, the thorough public scrutiny given the proposed rules has emphasized the need for additional chapters to be added to these ruies. I expect, therefore, in the coming months, to propose new rules governing water sampling and analytical procedures, pesticide disposal, hazardous waste disposal, the review of environmental assessment statements for solid waste facilities, and rules concerning the disposal of shredded wastes.

An analysis of the cost of the new regulation to New Jersey's taxpayers, prepared by the Solid Waste Industry Council of New Jersey (SWIC), projected an average increase of 200% in the cost of solid waste disposal. SWIC admitted in testimony to the Bureau of Solid Waste Management that their projected increase in cost of 200% was a result of comparing full compliance with the 1974 regulations with the cost of non-compliance with the 1970 regulations. In preparing their analysis, SWIC assumed that all sanitary landfills purchased their soil cover, would be required to install leachate collection and treatment systems and would have to install scales. A more realistic comparison of the differences between Chapter VIII and the new Rules which I have adopted discloses an expected increase in disposal costs of 18 cents per ton (5% rise) and an increase in collection costs of about 2 cents (1/10 of 1%). The cost of solid waste collection and disposal to the average family of three will rise approximately 20½ cents per year (present average rate is $48 annually), with the adoption of these new Rules.

These new Rules will entail an increase of approximately $50,000 in State administrative expenses over the currently budgeted $296,361. The adoption of these rules is expected to generate some $300,000 in fees.

The far greater protection to the lands and waters of this State as a result of the new Rules of the Bureau of Solid Waste Management in my judgement, far out-weighs the small increase in cost which will be incurred.

I consider the promulgation of these rules as an important first step in developing responsible State leadership in the field of Solid Waste Management. Diligent enforcement of this regulation is necessary to protect the public health, safety, and welfare. However, regional solid

waste management program development and implementation including resource recovery is the real answer to New Jersey's solid waste crisis. Development of strategies to establish such a system is a high priority for New Jersey.

DAVID J. BARDIN
David J. Bardin
Commissioner

Approved: 28 June 1974

Filed with Secretary of State: 28 June 1974

STATE OF NEW JERSEY

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DAVID J. BARDIN, Commissioner
P. O. Box 1390
Trenton, N. J. 08625
609 - 292 - 2885

ADOPTION OF REVISION TO RULES OF THE BUREAU OF SOLID WASTE MANAGEMENT

N. J. A. C. 7:26-1 et seq.
Docket No. DEP 021-75-02

David J. Bardin, Commissioner of the Department of Environmental Protection, pursuant to the authority of N. J. S. A. 13:1E-1 et seq. as amended, and N. J. S. A. 13:1D-1 et seq. hereby adopts revisions to Subchapter 7:26-4 of the Rules of the Bureau of Solid Waste Management concerning fees. The Department will hereafter propose and adopt additional revisions to the Rules of the Bureau of Solid Waste Management.

On March 6, 1975, the Department published notice of the proposed revisions to the Rules of the Bureau of Solid Waste Management in the New Jersey Register (7 N. J. R. 101(a), Docket No. DEP 021-75-02). In addition, notification was mailed to landfill operators, registered collectors/haulers, environmental commissions, health officers, municipal mayors and councils, watershed associations, organizations and private citizens.

In the Notice published in the New Jersey Register it was proposed to exempt those landfills operated in a municipality with a population of 10,000 or less and limited to residents hauling their own household refuse. At that time, it was estimated that 74 facilities would fall into this category. Upon re-examination, it was found that only in 6

or 7 communities do residents haul their own household refuse. The rules adopted here exempt from the inspection and regulation fee not only landfills in those communities where the residents haul their own refuse, but also landfills operated in communities with a population of 5,000 or less. In those communities having a population of 5,000 or less, handling only municipal type wastes, the Department is of the opinion that one inspection per year by Department personnel in conjunction with inspection reports by the town engineer would be adequate.

A public hearing was held on March 31, 1975 with the record remaining open for written comments thereto until April 7, 1975. Twenty-five written comments were received in addition to oral testimony presented at the hearing. The groups testifying included representatives of the New Jersey State Chamber of Commerce, the Chemical Manufacturers Association, the Solid Waste Industry Council (SWIC), watershed associations, environmental organizations, and private citizens. A list of those interested respondents who have contributed their thoughts is attached.

The present Rules of the Bureau of Solid Waste Management require a $500 annual fee for registration regardless of the size of the facility or type of waste accepted. There are no additional fees for inspection and regulation.

The rules as hereby adopted reduce the annual registration fee to $50 for all facilities. Inspection and regulation fees are on a sliding scale and are based on the size of the facility as well as the type of waste accepted.

The staff of the Department of Environmental Protection has reviewed all of the comments received. The Department realizes that additional review and study will be necessary prior to promulgation of revisions to the rules dealing with the definition and listing of hazardous waste, the siting and number of monitoring wells, test parameters and interpretation and the costs involved.

However, there is no reason to delay promulgation of the rules dealing with the fee schedule.

These rules will become effective immediately.

DAVID J. BARDIN
David J. Bardin
Commissioner

29 April 1975
Date

Oral Testimony @ Public Hearing—March 31, 1975

1) W. P. Anderson
for: State Chamber of Commerce and the New Jersey Chemical Industry Council of Environmental Commissions

2) Susanna Waterman
for: Sierra Club (NJ Chapter & The South Jersey Group)

3) R. K. Altreuter
for: Exxon Company USA

4) John Surmay
for: The City of Elizabeth

5) William P. Philibar
for: Rollins Environmental Services

6) Ian Walker
for: Stony Brook-Millstone Watershed Association

7) Theodore Schwartz
for: Solid Waste Industry Council of New Jersey

8) Dennis Fenn
Engineering Consultant for: Solid Waste Industry Council

9) David Nalven
for: NJ Manufacturers Association

10) Warren Gragory
for: National Solid Waste Management Association

11) Kenneth DiMuzio
for: Deptford Township Board of Health

12) Lief Sigmund
for: Scientific Chemical Processing Company

13) Betty Little
for: Passaic River Coalition

14) Wallace Coster
for: Nassau Inc.

15) Arthur Albohn
for: The Comline-Sanderson Engineering Corporation of Peapack

16) Peter Larson
for: Upper Raritan Water Association

17) Dr. Marvin Mahan
for: Scientific Inc.

18) Vincent Dotoli
for: John P. Fazzio Landfill Company & Southern Ocean Landfill

Written Testimony

1) Jerry Couvaras
for: Jerry's Cesspool and Septic Tank Service

2) Jan F. VanPeppen Ph.D.
private citizen

3) A. D. Grant
for: S. B. Pennick & Company

4) Lawrence E. Ward, Jr.
for: Garden State Septic Cleaners Association

5) Arthur R. Kobin
for: Browning-Ferris Industries

6) Ann Hunter
for: Solid Waste Advisory Council

7) Fred Hebeler
for: Solid Waste Advisory Council (Dept. of Health)

8) Richard O. Johnson
for: Solid Waste Advisory Council

9) Roger W. Johnson
for: Woodbridge Metropolitan Chamber of Commerce

10) J. H. Rook
for: American Cyanamid Company

11) P. A. Palmer
for: E. I. Du Pont de Nemours & Company

12) W. P. Anderson
for: Tenneco Chemicals

13) Watson B. Smith
for: City of Summit

14) Carlyle W. Crane
for: Plainfield Area Cartman's Association

15) Margaret Sprout
for: Township of Princeton

16) Mrs. Louis Bessire
for: Borough of Princeton

17) Denise E. Reid and H. Philip Minis
for: Princeton Township Environmental Commission

18) John W. Richard, Jr.
for: Atlantic Sanitation Service

19) Mrs. R. O. Rippere, 2nd
for: League of Women's Voters of Monmouth County

20) Joseph M. Smith
for: B. F. Goodrich Chemical Company

21) Gene Laningham
for: Browning-Ferris Industries, Inc.

22) Mary Owen
private citizen

23) Geraghty & Miller, Inc., Port Washington, NY

24) Rossnagel & Associates, Cherry Hill, NJ

25) Marvin Mahan
for: Scientific Inc.

DOCKET No. DEP-021-75-02

NOTICE OF ADOPTION OF AMENDMENTS TO N. J. A. C. 7:26-4
RULES OF THE BUREAU OF SOLID WASTE MANAGEMENT
CONCERNING FEES

Pursuant to N. J. S. A. 13:1E-1 et seq. Commissioner David J. Bardin hereby adopts the following revision in the Rules of the Bureau of Solid Waste Management identified as N. J. A. C. 7:26-1 et seq. The provisions of N. J. A. C. 7:26-4 adopted June 28, 1974, and effective July 1, 1974, are hereby repealed. The following rules are effective as of

7:26-4 RULES OF THE BUREAU OF SOLID WASTE MANAGEMENT CONCERNING FEES.

—4.1 *General*

—4.1.1 In accordance with N. J. S. A. 13:1E-18, there is hereby established a Fee Schedule. Said schedule shall apply to all sanitary landfill operations, incinerators, transfer stations, processing facilities, resource recovery facilities or any other methods of collection or disposal requiring registration with the Department.

—4.2 *Payment of Fees*

Fees shall be paid by certified check or money order and made payable to: Treasurer, State of New Jersey.

—4.3 *Fee Schedule for Solid Waste Facilities*

—4.3.1 Annual Registration Fee	$50
—4.3.2 Fee for Transfer of a Registration	50
—4.3.3 Inspection and Regulation Fee	

Solid Waste Facilities accepting	*Fee per quarter during which wastes are accepted*
Hazardous wastes, non-hazardous bulk liquids, non-hazardous semi-liquids and non-hazardous chemicals (in quantities greater than normally present in municipal refuse and excluding septic tank clean-out waste).	$500
40,000 tons or more of solid waste annually.	500
Between 20,000 and 39,999 tons of solid waste annually.	400
Between 10,000 and 19,999 tons of solid waste annually.	300
Between 6,000 and 9,999 tons of solid waste annually.	200
5,999 tons or less of solid waste annually.	100
Transfer stations and all facilities accepting septic tank clean-out waste only.	50
Facilities Qualifying under –4.8.	0

–4.4 Engineering Design Review (per design). This fee will entitle the registrant to submit or resubmit all information found deficient on the first submission until such time as the approval of the engineering design is granted or denied.

$500

–4.5 Reserved

–4.6 Reserved

–4.7 *Fee Schedule for Collection and Haulage*

–4.7.1 Annual registration, inspection, and regulation:

a. First vehicle $30

b. Each addition vehicle on the same registration 10

–4.7.2 The Registration of a solid waste collection and/or haulage system is non-transferable.

–4.7.3 Fees filed after July 1 shall be as follows:

(a) if initially submitted on or after January 1, be 50% of the full year's registration fee, or

(b) if initially submitted on or after April 1, be 25% of the full year's registration.

Partial fees paid shall only cover the fee requirement until July 1, of the year in which they were paid.

–4.8 *Exemption from Fee Payment*

–4.8.1 Any solid waste facility is exempt from payment of annual registration, inspection, and regulation fees provided that:

The facility is operated solely for the purpose of composting leaf and other vegetative yard wastes; and

The operation of the facility does not require a Certificate of Public Convenience and Necessity issued by the Board of Public Utility Commissioners; and

The annual Updated Registration Statement form (N. J. B. S. W. M. –41) filed with the Department prior to May 1 of each calendar year, is accompanied by a certification, executed by the operator of the facility on forms supplied by the Department, that the facility qualifies under the conditions set forth above.

–4.8.2 A sanitary landfill or transfer station is exempt from payment of inspection and regulation fee (see 4.3.3) provided that:

The operation of the facility does not require a Certificate of Public Convenience and Necessity issued by the Board of Public Utility Commissioners; and

The facility is limited to municipal waste of the residents of the host municipality; and

The solid waste facility is operated in a municipality having a population, based upon the most recent United States decennial census, of 5,000 or less—or—the facility is limited to residents of the host municipality hauling their own household refuse; and

The annual Updated Registration Statement form (N. J. B. S. W. M. –41) filed with the Department prior to May 1 of each calendar year, is accompanied by a certification, executed by the operator of the facility on forms supplied by the Department, that the facility qualifies under the conditions set forth above.

–4.8.3 Fees are not required for any solid waste facility or vehicle whose registrant is an agency of the New Jersey State Government.

–4.8.4 Fees are not required for any solid waste facility whose registrant is the federal government and whose operation is conducted on federal lands. Specifically not exempt are federal vehicles transporting solid waste to a solid waste facility registered with the Department.

–4.8.5 Persons hauling only their own household refuse in vehicles bearing passenger license plates or persons hauling solid waste in vehicles registered with the New Jersey Division of Motor Vehicles as having a maximum gross weight of 5,000 pounds, need not pay a registration fee to the Department.

–4.9 *Time for Submission of Fees*

Fee	*Jul 1*	*Oct 1*	*Jan 1*	*Apr 1*	*Others*
Annual registration (–4.3.1)	X				
Transfer of registration (–4.3.2)					At time of submission of Updated Registration Statement
Inspection and Regulation (–4.3.3)	X	X	X	X	
Engineering Design Review (–4.4)					At time of submission
Collector/Hauler Registration (–4.7.1)	X				

The provisions of N. J. A. C. 7:26-4 adopted June 28, 1974, and effective July 1, 1974, are hereby repealed.

New Jersey Administrative Code

(N. J. A. C.)

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7:26-1 General Provisions of the Rules of the Bureau of Solid Waste Management

—1.1 Scope of Rules

Unless otherwise provided by rules or statute, the following shall constitute the rules of the Bureau of Solid Waste Management and shall govern registration, operation and maintenance of landfill operations in the State of New Jersey, and other methods of solid waste disposal as may be approved by the Department; registration, operation and maintenance of collection and haulage operations in the State of New Jersey and other methods of collection and haulage of solid wastes as may be approved by the Department; a fee schedule for engineering review, registration, and inspection of solid waste disposal and registration of collection, haulage, and disposal operations in the State of New Jersey. These rules shall not apply to:

—1.1.1 The purchase, sale, collection, transport or other handling of separated, recycled or secondary materials exclusively in connection with the processing, recycling or utilization of such materials for re-introduction into industry as raw materials for further processing or use, provided that such materials are free from putrescible matter and are not mixed with other solid or liquid waste as defined herein. Specifically Not exempted are solid waste resource recovery facilities designed or operated for the purpose of separating mixed solid waste into useful secondary materials (including fuel and usable energy).

—1.1.2 Container-pickup facilities as herein defined.

—1.1.3 Garbage to be fed to swine in the State of New Jersey.

—1.1.4 Recycling Centers where individuals or organizations may deposit separated materials such as newsprint, bottles, cans, etc., prior to transport to the secondary materials industry.

—1.1.5 The intra-plant transport, temporary storage or other handling of plant generated waste materials. Specifically Not exempt are those materials to be, or which are, deposited on or in the lands of this state for periods exceeding six months, or which through transport, storage or other handling will cause pollution of the surface or ground waters of this state, or which may pose a substantial or material threat to the public health, safety or welfare.

—1.2 *Construction*

These rules shall be liberally construed to permit the Department and the Bureau of Solid Waste Management to discharge its statutory functions.

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—1.3 *Practice Where Rules Do Not Govern*

The Commissioner may rescind, amend, or expand these rules from time to time, and such rules shall be filed with the Secretary of State as provided by law. In any matter concerning solid waste management that arises not governed by these rules, the Commissioner, the Director or the Bureau Chief shall exercise his discretion within the authority of N. J. S. A. 13:1E-1 et seq.

—1.4 *Definitions*

—1.4.1 *Approved Registration*

The registration of a solid waste disposal site, collector/hauler, or other solid waste facility issued by the Bureau of Solid Waste Management, Department of Environ-

mental Protection, after review and approval of the Registration Statement.

—1.4.2 *Bulk Liquid or Bulk Semi-liquid*

Liquid or semi-liquid which is contained within, or is discharged from, any one vessel, tank or other container which has the capacity of twenty (20) gallons or more.

—1.4.3 *Bulky Waste*

Large items of solid waste which because of their size or weight requires handling other than normally used for municipal solid waste. Bulky waste includes but is not limited to such items as tree trunks, auto bodies, demolition or construction material, appliances, furniture, and drums.

—1.4.4 *Bureau*

The Bureau of Solid Waste Management in the Division.

—1.4.5 *Bureau Chief*

The Chief of the Bureau of Solid Waste Management or any person designated to act on the Chief's behalf.

—1.4.6 *Catch-basin*

A chamber or well, usually built at the curbline of a street, which admits surface water for discharge into a storm water drain.

—1.4.7 *Cell*

Compacted solid wastes that are enclosed by natural soil or cover material in a land disposal site.

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—1.4.8 *Chemical Waste*

A material normally generated by or used in chemical, petrochemical, plastic, pharmaceutical, biochemical or

microbiological manufacturing processes, which has been selected for waste disposal and which is known to hydrolize, ionize or decompose, which is soluble, burns or oxidizes, or which may react with any of the waste materials which are introduced into the landfill, or which is bouyant on water, or which has a viscosity less than that of water or which produces a foul odor. Chemical waste may be either hazardous or non-hazardous.

—1.4.9 *Collection*

The act of picking up solid waste at its point of generation or storage and placing it in a vehicle.

—1.4.10 *Collection Vehicle*

A vehicle (usually a specially designed truck) used in collection.

—1.4.11 *Collector-Hauler*

A person engaged in the act of collection of solid waste and/or transporting such waste between solid waste facilities.

—1.4.12 *Commissioner*

The Commissioner of the Department of Environmental Protection or any other person designated to act on the Commissioner's behalf.

—1.4.13 *Container-Pickup Facility*

A site where one or more containers are located for temporary storage of solid waste at the point of waste generation while awaiting periodic removal to a registered solid waste facility. A container-pickup facility differs from a transfer station (q. v.).

—1.4.14 *Construction Waste*

Waste building material and refuse resulting from construction, remodeling, and repair operations on houses, commercial buildings, pavements, and other structures.

—1.4.15 *Cover Material*

Soil, earth, or other insoluble and non-degradable material approved by the Department which is used to cover compacted solid waste in a sanitary landfill for the purpose of rodent and vector control, to minimize moisture entering the fill, to provide a fire break, and in the case of final cover, to grow vegetation for erosion control. The depth or thickness of cover material is to be measured after compaction with at least one pass of a bulldozer or other suitable equipment having a gross weight in excess of 10,000 pounds.

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—1.4.16 *Daily Cover*

Cover material that is a minimum of six (6) inches in depth.

—1.4.17 *Demolition Waste*

Waste generated from the razing of buildings, factories, and other man-made structures, including streets, roads, and fences.

—1.4.18 *Department*

The New Jersey Department of Environmental Protection.

—1.4.19 *Director*

The Director of the Division of Environmental Quality or any person designated to act on the Director's behalf.

—1.4.20 *Disposal*

The storage, treatment, utilization, processing, or final disposition of solid waste.

—1.4.21 *Disposal Facility*

A solid waste facility used for the disposal of solid waste.

—1.4.22 *Division*

The Division of Environmental Quality in the Department.

—1.4.23 *Dump*

A land site which solid waste is disposed of in a manner which does not protect the environment, is susceptible to open burning, or is exposed to the elements, vectors, and scavengers.

—1.4.24 *Engineering Design*

Reports and drawings, including a narrative operating description, prepared by a New Jersey licensed Professional Engineer to describe a solid waste facility and its proposed operation.

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—1.4.25 *Environmental Impact Statement*

A statement as to the probable impact of the proposed solid waste facility upon the air quality, water quality, water supply, hydrology, geology, soils, topography, vegetation wildlife, aquatic organisms, ecology, demographic conditions, land use, aesthetics, history and archeology; a listing of adverse environmental impacts which cannot be avoided; a description of the steps to be taken to minimize adverse environmental impacts during construction and operation both at the project site and in the surrounding region; a listing of alternatives to all or any part of the project with reasons for their acceptability or nonaccept-

ability; and a reference list of pertinent published information relating to the project, the project site and the surrounding region.

—1.4.26 *Existing Solid Waste Facility*

That portion of an active solid waste facility which, as of the effective date of these regulations, possesses a valid approved registration from the Department.

—1.4.27 *Final Cover*

Cover material that is a minimum of twenty-four (24) inches in depth.

—1.4.28 *Free Moisture*

Liquid that drains freely by gravity from solid materials.

—1.4.29 *Generation*

The act or process of producing solid waste.

—1.4.30 *Generator*

The person who causes solid waste to be generated.

—1.4.31 *Ground Water*

That water below ground, the static pressure of which is equal to or greater than prevailing atmospheric pressure; that water present in the saturated zone of an aquifer.

—1.4.32 *Haulage Vehicle*

A vehicle used to transport solid waste between one solid waste facility and another. A transfer vehicle.

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—1.4.33 *Hazardous Waste*

Any waste or combination of waste which poses a present or potential threat to human health, living organisms or the environment. It shall include waste material that is

toxic, corrosive, irritating or sensitizing, radioactive, biologically infectious, explosive, or flammable. It includes but need not be limited to, those materials and concentrations of materials that are determined to be toxic by the Federal Secretary of Health, Education and Welfare pursuant to section 20(6) of the Occupational Safety and Health Act of 1970 (Public Law 9-596) (OSHA) and those materials listed in the current Part 172, Title 49 of the Code of Federal Regulations issued by the Federal Department of Transportation.

—1.4.34 *Impermeable Liner*

A layer of natural and/or man-made material of sufficient thickness, density, and composition so as to have a maximum permeability for water of 10^{-7} cm/sec at the maximum anticipated hydrostatic pressure.

—1.4.25 *Infectious Waste*

Includes: (1) equipment, instruments, utensils, and fomites (any substance that may harbor or transmit pathogenic organisms) of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies; (2) laboratory wastes including pathological specimens (i.e., all tissues, specimens of blood elements, excreta, and secretions obtained from patients or laboratory animals) and disposable fomites attendant thereto; (3) surgical operating room pathologic specimens and disposable fomites attendant thereto and similar disposable materials from out-patient areas and emergency rooms.

—1.4.36 *Intermediate Cover*

Cover material that is a minimum of twelve (12) inches in depth.

—1.4.37 *Incinerator*

A thermal device in which solid waste is burned for the purpose of volume reduction (an incinerator used to obtain energy shall be classified as a Resource Recovery Facility—q.v.).

—1.4.38 *Leachate*

Liquid that has been in contact with solid waste and contains dissolved or suspended materials from that solid waste.

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—1.4.39 *Lethal Chemical*

Ammunition, chemical or biological warfare agent, pyrotechnic material and military store of any kind capable of being used in inflict death or harm to man or his environment.

—1.4.40 *Lift*

A compacted layer of solid waste plus its overlying cover material in a sanitary landfill.

—1.4.41 *Municipal Solid Waste*

Residential, commercial and institutional solid waste generated within a community.

—1.4.42 *New Solid Waste Facility*

Any solid waste facility or portion thereof which does not qualify as an existing solid waste facility (q.v.).

—1.4.43 *Open Burning*

Any fire whose products of combustion are emitted directly into the open air, and are not directed thereto through the stack or chimney of an incinerator.

—1.4.44 *Pathological Waste*

See Infectious Waste

—1.2.45 *Person*

Any individual, corporation, company, association, society, firm, partnership, joint stock company or any political subdivision of this State or any agency or instrumentality thereof.

—1.4.46 *Putrescible Waste*

Any waste liable to enter into a state of putrefaction, the typically anaerobic splitting of proteins by bacteria and fungi with the formation of foul-smelling, incompletely oxydized products.

—1.4.47 *Recycling Facility*

Any place, equipment, or plant designed and/or operated to collect, store, process or to redistribute separated waste so as to return the material to market.

—1.4.48 *Registration*

See approved registration.

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—1.4.49 *Registration Statement*

An application for approved registration executed on forms provided by the Bureau and containing such information as may be required.

—1.4.50 *Residue*

Any material that remains after completion of thermal, mechanical or chemical processing.

—1.4.51 *Resource Recovery Facility*

Any place, equipment, device, or plant designed and/or operated to separate or process solid or liquid waste into usable secondary materials, including fuel and energy.

—1.4.52 *Runoff*

The liquid that drains from an area as surface flow.

—1.4.53 *Salvaging*

The controlled removal of waste materials from a solid waste disposal facility for reuse.

—1.4.54 *Sanitary Landfill*

The land disposal site employing an engineered method of disposal of solid waste in a manner that minimizes environmental hazards, including, but not limited to the spreading of the solid waste in thin layers, compacting the waste to the smallest practical volume, and applying cover material on a daily or more frequent basis.

—1.4.55 *Scavenging*

The uncontrolled removal of solid waste material.

—1.4.56 *Segregation*

The systematic division of solid waste into components.

—1.4.57 *Semi-liquid*

A mixture consisting of solid matter suspended in a liquid media (e.g. a slurry).

—1.4.58 *Septic Waste*

The solid, liquid, or semi-liquid waste removed from septic tanks or cesspools.

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—1.4.59 *Sewage Sludge*

The solid residue consisting of sewage solids combined with water and dissolved materials in varying amount.

—1.4.60 *Solid Waste*

Garbage, refuse, and other discarded materials resulting from industrial, commercial, and agriculture operations

and from domestic and community activities, and shall include all other waste materials including liquids disposed of incident thereto except it shall not include solid animal and vegetable wastes collected by swine producers licensed by the State Department of Agriculture to collect, prepare, and feed such wastes to swine on their own farms.

—1.4.61 *Solid Waste Facility*

Any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering, or disposal of solid waste.

—1.4.62 *Solid Waste Management*

The purposeful, systematic control of the generation, storage, collection, processing, transfer, transportation, separation, recycling, recovery, and disposal of solid wastes.

—1.4.63 *Storage*

The interim containment of waste after generation and prior to disposal.

—1.4.64 *Surface Water*

A body of water whose top surface is exposed to the atmosphere including a flowing body such as a river, as well as a standing body, such as a pond or lake, whose waters may reach any ground waters or classified surface waters of this state and shall include all waters of this state classified by the Department as FW-1, FW-2, FW-3, TW-1, TW-2, TW-3, CW-1 or CW-2.

—1.4.65 *Toe*

The bottom of the working face or side slope of a land disposal site where deposited solid waste is in contact with virgin ground or previous lift.

—1.4.66 *Transfer Station*

A facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a solid waste facility.

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—1.4.67 *Vector*

An organism, including insects, other arthropods, or rodents, that is capable of transmitting a pathogen from one organism to another.

—1.4.68 *Waste*

Useless, unwanted or discarded solid, semi-liquid, or liquid material.

—1.4.69 *Working Face*

That portion of a land disposal site where solid waste is discharged by a collection and/or haulage vehicle and is spread and compacted prior to placement of cover material.

—1.5 *Repeal of Regulations*

The provisions of the New Jersey Administrative Code 7:26-1 et seq., (formerly Chapter VIII—Refuse Disposal), a chapter of the New Jersey State Sanitary Code, adopted April 30, 1970, by the Public Health Council, to become effective July 1, 1970) are hereby repealed. This repeal shall not affect actions, proceedings, or departmental orders pending or outstanding on the effective date of the new regulation; said actions, proceedings, or departmental orders may be prosecuted, defended and continued in the same manner and to the same effect as if the new regulations had not been adopted. The adoption of these regulations shall not require the alteration of the engineering

design submitted for an existing solid waste facility providing that the implementation of all features contained in that engineering design will not fail to meet the operational requirements contained in these new regulations.

—1.6 *Reserved*

—1.7 *Variance*

Upon written presentation of acceptable evidence that deviation from these rules and regulations will satisfy the intent and purpose of these regulations, a variance may be granted by the Commissioner in accordance with the *Rules of Practice and Procedure for the Bureau of Solid Waste Management*, adopted pursuant to the Administrative Procedure Act (N. J. S. A. 52:14B-1 et seq.).

—1.8 *Reserved*

—1.9 *Penalties*

Penalties for violation of the provisions of these regulations shall be those provided by statute.

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7:26-2 Rules of the Bureau of Solid Waste Management Concerning Disposal

—2.1 *Dumps Prohibited*

—2.1.1 Dumps are hereby declared to be nuisances hazardous to human health and are prohibited.

—2.1.2 The disposal of solid waste in this State shall be made only through use of:

a. Sanitary Landfills established, operated and maintained in accordance with the regulations set forth in this subchapter.

b. Incinerators constructed, operated and maintained in accordance with Regulations of the New

Jersey State Department of Environmental Protection promulgated under authority of the Air Pollution Control Act 1954 and regulations set forth in this subchapter.

c. Transfer station, composting facility, resource recovery or other processing facility, constructed and operated in accordance with regulations set forth in this subchapter.

–2.2 *Registration*

–2.2.1 Registration statement: No person shall hereafter engage or continue to engage in disposal of solid waste in this State without first filing a completed registration statement with the Bureau for each disposal facility. The Registration Statement shall be signed by the person engaged in or desiring to engage in solid waste disposal, shall be executed on forms furnished by the Department, and shall state such information necessary and proper for the enforcement of this subchapter as the Department may require. An Engineering Design must be submitted with the Registration Statement.

–2.2.2 Approved registration: No person shall engage in disposal of solid waste in this State without having first obtained Departmental approval of the registration statement required under 2.2.1.

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–2.2.3 Approved engineering design: No new facility shall begin operations without first obtaining Departmental approval of the engineering design submitted with the registration statement; nor shall any existing facility continue to operate subsequent to receiving notice that the Department has disapproved the engineering design for

that facility. Failure to comply with the requirements of this subsection shall be cause for revocation of an approved registration for an existing facility or the denial of registration for a new installation.

–2.2.4 No person shall engage in disposal of solid waste in this state if such an operation does not meet the operational requirements listed in 7:26-2. In addition, each disposal facility must comply with any conditions or limitations which may be specified on the Approved Registration. Approved Registrations are further contingent upon implementation of all features contained in the approved engineering design.

–2.2.5 Prior to May 1, in each calendar year, each registrant shall submit to the Department, a statement updating the information contained in the initial registration statement. This update shall be on forms furnished by the Department. In no case shall submission of an updated statement alter the requirements of 7:26-2.2.4.

–2.2.6 The registrant shall notify the Department in writing within thirty (30) days of any change in status as listed on his current registration statement.

–2.2.7 The failure to submit an update registration statement and to submit all applicable fees (see 7:26-4) on or before July 1 of each calendar year shall be sufficient cause to revoke the approved registration of a solid waste facility.

–2.3 *Domestic Refuse*

The provisions of this subchapter shall not be applicable to disposal of family garbage, yard wastes or family refuse on the premises of one or two family dwellings where the family resides nor shall the provisions of this sub-

chapter be interpreted as permitting disposal of domestic sewage in any manner other than that prescribed by law.

–2.4 *Submission of Engineering Designs*

Designs for Sanitary Landfills, Incinerators and other methods of disposal shall be prepared by a New Jersey licensed professional engineer and submitted to the Bureau for review. The designs shall conform to all rules and regulations for preparation and submission as required and in accordance with the Guidelines and Criteria for Preparation of an Engineering Design as set forth in 7:26-2.12 (as applicable).

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–2.5 *Sanitary Landfill Operational Requirements (General)*

–2.5.1 The width of the working face shall be kept as narrow as is consistent with the proper operation of trucks and equipment in order that the area of waste material exposed during the operating day is minimal. No working face shall exceed one-hundred fifty (150) feet in width when measured across the operating surface of the fill. Except where separate areas are designated on the Engineering Design for specific wastes, no more than one working face shall be in use at any one time.

–2.5.2 All deposited material shall be promptly spread and compacted to a uniform grade by use of equipment sufficient to achieve an inplace density of at least 700 pounds per cubic yard.

–2.5.3 No lift shall exceed twelve (12) feet in height.

–2.5.4 No new sanitary landfill shall be conducted where solid waste is or would be in contact with the surface or

ground waters of this state. This provision shall not apply to non-water soluble, non-decomposable inert solids such as:

(a) earth, rock, gravel, and concrete

(b) asphalt paving fragments

(c) glass

(d) clay and clay or ceramic products

No existing sanitary landfill may continue to deposit solid waste, except those noted in (a), (b), (c) and (d) above where solid waste is or would be in contact with the surface or ground waters of this state.

No new sanitary landfill shall be conducted, nor shall an existing landfill continue to be conducted where the solid waste, in whole or in part, or the leachate produced as a result of the sanitary landfill, impairs the quality of the surface or ground waters of this state to a degree that would degrade the quality of either the surface or ground waters of this state beyond the classification established by the Department for the surface water in question or the potable water standard established by the Department in the case of ground water. In those cases where the natural water quality fails to meet the established standards, the landfill operation shall not aggravate the condition.

–2.5.5 All lifts shall be graded so as to facilitate drainage therefrom. Side slopes and working face shall not exceed a verticle rise of one (1) foot for each horizontal distance of two (2) feet.

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–2.5.6 Control over the scattering of papers and other lightweight materials shall be effected by the use of movable fencing and/or other effective methods.

–2.5.7 Dust control shall be effectively implemented as quired.

–2.5.8 The operation of a solid waste facility shall not result in odors associated with solid waste being detected off site by sense of smell in any area of human use or occupancy.

–2.5.9 Equipment adequate for digging, spreading, compacting and/or covering shall be provided.

–2.5.10 When requested, by a representative of the Bureau or local Board of Health having jurisdiction the operator shall furnish proof that provisions have been made for the repair or replacement of equipment which becomes inoperative. Reasonable effort shall be taken to insure that faulty equipment shall not interfere with the proper operation of the facility and services provided.

–2.5.11 An adequate water supply and/or fire fighting equipment shall be readily available on site or on call to extinguish any and all fires. Fire fighting procedures shall be posted.

–2.5.12 Control of insects, other arthropods, and rodents shall be effected by means of a program directed by a qualified applicator of pesticides in accordance with the New Jersey Pesticide Control Code N. J. A. C. 7:30-1 et seq.

–2.5.13 All exposed surfaces of solid waste shall be covered with daily cover material, or intermediate cover material, or final cover material at the close of each operating day. The exposed surface of solid waste shall not exceed 15,000 square feet, and in no case shall any solid waste be exposed in excess of twenty-four (24) hours.

–2.5.14 No daily cover shall be exposed for any period exceeding twenty-four (24) hours.

–2.5.15 No intermediate cover shall be exposed for any period exceeding six (6) months.

–2.5.16 Final cover material shall be applied to any surface of the fill where the final planned elevation has been obtained, and to all surfaces when the landfill operation is terminated.

–2.5.17 The grade and thickness of cover material on all surfaces of the fill shall be maintained until stabilized.

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–2.5.18 There shall be stored within the boundaries of the landfill, a standby supply of cover material equal to twenty-five (25) percent of the volume of the landfill consumed in ten days at normal disposal rates.

–2.5.19 Only vehicles displaying the New Jersey Bureau of Solid Waste Management registration number and a current registration indicator shall be admitted for unloading of any solid waste at or near the active working face of a sanitary landfill when commercial type collection or haulage vehicles (including but not limited to compactor trucks, trailers, or any vehicle that tilts or uses other mechanical means to discharge its solid waste) are unloading or when heavy equipment is operating at the working face.

–2.5.20 Operators of sanitary landfills may elect to provide one or more containers of sufficient capacity within a designated secure area under the landfill's control (located a safe distance from the active working face and the movement of associated landfill equipment and commercial type collection and haulage vehicles) so that waste may

be unloaded from non-commercial automobiles and station-wagons and deposited therein under supervision of landfill personnel. Provision for bulky items may also be provided. The landfill operator shall be responsible for the sanitary condition and orderly appearance of the designated area. It shall be the operator's responsibility to remove the waste from the containers and to deposit it in the active working face and/or remove the bulky items from the area and deposit them in the designated landfill area at such frequency so as not to exceed the capacity of the area or containers. Scavenging is prohibited.

–2.5.21 New facilities shall install the gas venting and monitoring systems indicated on the approved engineering design prior to operating. A phase-in of the system is permitted if so indicated on the approved engineering design. Existing facilities shall be required to design, obtain departmental approval of the design, and implement a gas venting and monitoring system when so ordered by the Department as a result of the detection of landfill gases beyond the perimeter of the designated fill area. Detection may be by ground probing or vegetation damage. The recovery of landfill gases for use as a fuel is not prohibited by this subsection. In no case shall the accumulation of combustible gases in excess of their lower explosive limits within confined structures on or adjacent to the facility be permitted.

–2.5.22 No new solid waste facility shall begin operations without first installing a ground water monitoring system constructed and located in accordance with instructions furnished by the Department. Further, no new facility shall begin operations prior to obtaining ground water samples, and analyses thereof, for the purpose of establishing baseline information.

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Upon written notice from the Department that in the opinion of the Department, continued operation of an existing solid waste facility poses a real or potential threat to the quality of the ground waters of the State, the operator of the solid waste facility shall install a ground water monitoring system located and constructed in accordance with instructions furnished by the Department.

The taking and analyses of samples shall be done by a laboratory acceptable to the State using methods approved by the Department, copies of analyses shall be forwarded to the Bureau within thirty (30) days of sampling date.

The initial and annual (submitted with each updated registration statement) analyses shall include the following determinations.

a. presence of organisms of the Coliform Group
b. turbidity
c. color
d. taste
e. odor
f. Arsenic (As)
g. Barium (Ba)
h. Cadmium (Cd)
i. Chromium (hexavalent Cr^{+6})
j. Cyanide (CN)
k. Fluoride (F)
l. Lead (Pb)
m. Selenium (Se)
n. Silver (Ag)

o. A.B.S./L.A.S. (Alkyl-Benzene-Sulfonate and Linear-Alkyl-Sulfonate or similar methylene blue reactive substances contained in synthetic detergents.
p. Chloride (Cl)
q. Copper (Cu)
r. Hardness (as $CaCO_3$)
s. Iron $(Fe)^{++}$
u. Manganese $(Mn)^{++}$
v. Nitrate (NO_3)
w. Phenolic Compounds (as phenol)
x. Sodium (Na)
y. Sulfate (SO_4)
z. Total Dissolved Solids
aa. Zinc (Zn)
bb. C.O.D.
cc. B.O.D.

Each third month the analyses shall include the following determinations:

a. Chloride (Cl)
b. Hardness (as $CaCO_3$)
c. Iron $(Fe)^{++}$
d. Phenolic Compounds (as phenol)
e. Total Dissolved Solids
f. C.O.D.
g. B.O.D.

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–2.5.23 No new solid waste facility shall be initiated nor shall an existing solid waste facility continue within the restricted zone of an airport listed in 7:26-2.5.24 when such

a facility presents a real or potential attraction for birds, until an effective deterent plan shall be implemented. For the purpose of this rule, the restricted zone shall be defined as a two and one half (2½) mile radius centered on the geographic center of the runways.

–2.5.24 The airports referred to in 7:26-2.5.23 are as follows:

Airport	Near
Atlantic City (Pomona)	Atlantic City, NJ
Bader	Atlantic City, NJ
Cape May County	Cape May, NJ
Greater Wilmington	Wilmington, DEL
Linden	Linden, NJ
NAS Lakehurst	Lakehurst, NJ
McGuire AFB	Wrightstown, NJ
Mercer County	Trenton, NJ
Millville	Millville, NJ
Morristown	Morristown, NJ
Newark	Newark, NJ
North Philadelphia	Philadelphia, PA
Philadelphia International	Philadelphia, PA
Teterboro	Teterboro, NJ

Others as designated by the Department.

–2.5.25 After July 1, 1975, the solid waste content of all collection and haulage vehicles shall be determined by weight through the use of appropriate scales at the disposal facility. This subsection shall not apply to:

a. liquid or semi-liquid waste measured in gallons.
b. waste delivered by non-commercial automobiles or station-wagons.

c. waste delivered to solid waste facilities which receive less than twenty (20) trucks and less than five hundred (500) cubic yards, and less than one hundred (100) tons in any one day.

d. waste the weight of which is determined by use of public scales.

e. vegetative waste delivered to solid waste facilities authorized to receive only such waste.

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–2.5.26 The operator of a sanitary landfill shall maintain a record of the quantity accepted for disposal of each category of waste listed on the registration statement. The compilation of the records for the previous twelve months shall be furnished on the annual update registration statement. In the event that scales were not used to physically weigh the waste, volume to weight conversions shall be made by means of formulae furnished by the Department.

–2.6 *Sanitary Landfill Operational Requirements (Specified)*

–2.6.1 Sewage Sludge, Septic Tank and Catch-basin Clean-outs and Other Fecal Material.

–2.6.1.1 No sewage sludge, septic tank or catch-basin clean-out or other fecal material of human or animal origin, liquid or solid, shall be lagooned. All such material shall be immediately and thoroughly mixed with garbage and refuse to attain complete absorption (no free moisture) or shall be discharged into a covered subterranean system sealed from the atmosphere in such a manner as to contain odors and prevent migration of vectors, or shall be converted into an inert non-leaching solid substance, or discharged into a sewage treatment plant.

–2.6.1.2 Cover material shall be applied no later than at the conclusion of the day's operation (immediately if practicable) to all areas whereon sewage sludge, septic tank or catch-basin clean-out or other fecal material of human or animal origin, liquid or solid, has been deposited. Cover over such areas shall in no case be less than twelve (12) inches in depth.

–2.6.1.3 Any solid waste facility accepting sewage sludge, septic tank or catch-basin clean-out or other fecal material of human or animal origin, liquid or solid, for disposal on or in the ground, shall install monitoring wells which are constructed and located in accordance with Department instructions. Samples shall be taken from each well and analyzed by a laboratory acceptable to the Department at least once every three months. Analyses shall be made for the presence of organisms of the Coliform Group and for other determinations as required by the Department. Results of analyses shall be furnished to the Department within thirty (30) days of sampling. Should monitoring well analyses indicate objectionable coliform levels, or if oozing, the presence of seepage, or other ground conditions indicate saturation of the soil, the facility shall discontinue immediately the acceptance of sewage sludge, septic tank and catch-basin clean-outs and other fecal material until such time that in the opinion of the Department, acceptance may resume.

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–2.6.2 Bulky Wastes

–2.6.2.1 Bulky items which are to be placed in the cell of a landfill shall be reduced to the smallest size practicable.

–2.6.2.2 Bulky items shall not be permitted to protrude through the final surface or side slopes of a landfill.

–2.6.2.3 If so indicated on the engineering design, separate areas of a landfill operation may be designated solely for the storage of salvageable bulky wastes (excluding those mixed with putrescible wastes) while awaiting recovery or disposal. Material so handled may be stored without cover for seven (7) days (at no time shall the storage area exceed 50 feet in any direction). Salvage material shall not be stored on the active fill area.

–2.6.3 Radioactive Materials and Lethal Chemicals

–2.6.3.1 Radioactive materials regulated by the Atomic Energy Act of 1954 and lethal chemicals shall not be deposited in or upon the land or waters of the State of New Jersey nor incinerated within the territory governed by the State of New Jersey without prior approval in writing by all authorities having jurisdiction in such matters and by the New Jersey Department of Environmental Protection.

–2.6.4 Pesticides (or Contaminated Containers), Hazardous Wastes, Chemical Wastes, Bulk Liquids and Semi-Liquids.

–2.6.4.1 *Responsibility of the Generator or Owner of the Waste.* It shall be the responsibility of the generator or owner of pesticides (or Contaminated containers), hazardous wastes, chemical wastes, bulk liquids, and semi-liquids to identify and label such materials in accordance with Part 172 et seq., Title 49, Code of Federal Regulations (D. O. T.). It shall be the responsibility of the generator or owner to assure that the selected carrier transporting such materials is one registered with the Bureau of Solid Waste Management, and that the shipment is consigned to a solid waste facility registered with and authorized by the Bureau for the disposal of that specific waste. A shipping document shall be furnished to the carrier by the generator or owner of the waste which

lists all material contained in the shipment, their quantities, the designated disposal facility and any instructions necessary for their safe handling. The generator or owner of such waste, the registered operator of the solid waste facility, the authority having jurisdiction in such matters and the New Jersey State Department of Environmental Protection shall jointly

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determine the method of disposal. It shall be the responsibility of the generator or owner of *hazardous wastes* to furnish to the New Jersey Bureau of Solid Waste Management, annually by the 15th day of February, a list of all such waste materials transferred from his control during the preceding calendar year. The list shall identify the material, the quantity, the type of container in which dispatched, its marking, the carrier including the N. J. B. S. W. M. code number, the date shipped, the shipping document reference number, and the destination.

–2.6.4.2 *Responsibility of the Registered Operator of the Solid Waste Facility.* It shall be the responsibility of the registered operator of each solid waste facility to maintain records and furnish to the New Jersey Bureau of Solid Waste Management a list of all hazardous wastes received for disposal, treatment, or storage during the past calendar year. The list shall be forwarded by the 15th day of February annually. The list shall identify the material, the source, quantity, type of container in which disposed or stored, if any, and how marked, carrier delivering the material (including the N. J. B. S. W. M. code number), shipping document reference number, date received, type of treatment if any, and the location where disposed or stored (this last item should be exact enough to permit recovery of the material if so desired.

–2.6.4.3 Any solid waste facility accepting pesticides (or contaminated containers), hazardous wastes, chemical wastes, bulk liquids or semi-liquids for disposal or storage on or in the ground, shall install monitoring wells which are constructed and located in accordance with instructions available from the Department. Samples shall be taken from each well and analyzed by a laboratory acceptable to the Department at least once every three months. Analyses shall be made for all determinations listed in –2.5.22 and any other determinations specified by the Department. Results of the analyses shall be furnished to the Department within thirty (30) days of sampling. Should monitoring well analyses or any other means of detection indicate a real or potential threat to the quality of the waters of this State by the solid waste facility, the acceptance of pesticides, hazardous wastes, chemical wastes, bulk liquids or semi-liquids shall be discontinued immediately. An acceptable system of interception, collection, and treatment shall be implemented at once and such treatment shall continue until the threat to the water of the State by the solid waste facility shall no longer exist. Prior

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to reacceptance of the discontinued material, an engineering design acceptable to the Department which describes corrective measures to prevent recurrence of the threat must be submitted and the design implemented.

–2.6.4.4 Beginning March 15, 1975, no solid waste facility shall accept or receive for disposal on or in the lands of this State any pesticide (or contaminated containers), hazardous waste, chemical waste, bulk liquid or semi-liquid unless such facility has installed a system for the interception, collection and treatment of any and all leachate generated at the facility, and has obtained approval from the Department for the entire system. Requests for Department approval may be in the form of an addendum to the engineering design submitted under 7:26-2.2.3 and in accordance with 7:26-2.4, shall be prepared by a New Jersey licensed professional engineer, and shall include detailed engineering drawings and specifications of the proposed system. In addition, requests for Department approval shall specify the exact nature and quantity of each waste to be accepted at the facility, the method of handling and treating those wastes, and shall include proof that all necessary permits and licenses have been obtained for any discharge into the waters of the State.

–2.6.5 *Infectious Waste*

The generator or owner of infectious waste shall be responsible for rendering such waste non-infectious prior to removal from the premises where generated and for certifying to the registered operator of the solid waste facility where assigned and the Bureau that such waste has been rendered non-infectious.

–2.7 *Disrupted Landfill Requirements*

–2.7.1 Written approval shall be obtained from the Department prior to any excavation, disruption, or removal of any deposited material from either an active or discontinued landfill.

–2.7.2 All requests for approval shall include an operational plan stating the area involved, depth of such excavation with final grades, estimated cubic yards of material to be excavated, site where excavated material is to redeposited and estimated time required for completion of excavation procedures.

–2.7.3 All excavation shall be confined to an area consistent with the number of pieces of digging equipment and/or trucks used for haulage.

–2.7.4 Adequate measures shall be taken during excavation to control dust, odors, fires, rodents, insects, and blowing litter.

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–2.7.5 The deposition of all redeposited solid waste resulting from excavation shall be in conformity with all requirements of this subchapter.

–2.8 *Smoking, Smoldering or Burning Landfill*

–2.8.1 In the case of a fire on an active disposal facility the responsibility shall lie with the registered operator. In the case of a fire on a discontinued or unregistered disposal operation, the responsibility shall lie with the person having the title to the premises whereupon the fire exists.

–2.8.2 The operator of any active landfill where smoldering, smoking, or burning is occurring shall immediately notify the police and fire departments having jurisdiction, and the Bureaus of Solid Waste Management and Air Pollution Control.

–2.8.3 The operator of any active landfill shall be responsible for initiating and continuing fire fighting actions until all smoldering, smoking, and burning cease.

–2.8.4 The operator of any landfill shall seek and obtain fire-fighting assistance if smoldering, smoking, or burning persists for longer than twenty-four (24) hours.

–2.8.5 The operator of any landfill shall not conduct disposal activities within the immediate vicinity of any

smoldering, smoking, or burning condition. Precautions shall be taken to prevent disposal activities from interfering with fire-fighting activities.

–2.8.6 Any disruption of the finished grade or covered compacted surfaces shall be repaired and recovered upon completion of fire-fighting activities.

–2.8.7 Control and prohibition of air pollution from refuse disposal and salvage operations shall be effected through compliance with the New Jersey Administrative Code (N. J. A. C.) 7:27-2.1 et seq., Control and Prohibition of Open Burning.

–2.9 *Termination or Change of Ownership of a Landfill*

–2.9.1 The registered operator of any landfill shall notify in writing the State Department of Environmental Protection, and utilities shall petition the Public Utilities Commission pursuant to its rules and regulations of his intent to discontinue operations thereon, at least 30 days prior to the intended date of discontinuance.

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–2.9.2 The State Department of Environmental Protection shall examine all sanitary landfills upon discontinuance of operations to determine whether there is compliance with the New Jersey Administrative Code (N. J. A. C.) 7:26-2, the Rules of the Bureau of Solid Waste Management Concerning Disposal.

–2.9.3 Upon termination of the landfill, a detailed description of the landfill shall be recorded, along with the deed, with the appropriate County Hall of Records. The description shall include the general types and locations of wastes on the site, the depth of fill, the depth and type of cover material, the dates the landfill was in use, and all

such other information as may be of interest to potential landowners.

–2.9.4 Any landfill that is terminated under the provisions of this subchapter must be maintained in accordance with the landfill design submitted and must remain in compliance with all regulations of this subchapter. Responsibility for the maintenance of discontinued operations shall rest with the property owner of record.

–2.10 *Reserved*

–2.11 *General Operational Requirements for Incinerators, Transfer Stations, Processing Facility, and Resource Recovery Facilities*

–2.11.1 Within each twenty-four hour period, the operator of the facility shall clean each area where putrescible waste has been deposited or stored.

–2.11.2 No putrescible waste shall be stored longer than 24 hours at the facility without acceptable treatment to prevent putrefaction.

–2.11.3 Control over the scattering of papers and other lightweight materials shall be effected by the use of fencing and/or other effective methods.

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–2.11.4 Dust control shall be effectively implemented as required.

–2.11.5 The operation of the solid waste facility shall not result in odors associated with solid waste being detected off site by sense of smell in any area of human use or occupancy.

–2.11.6 When requested, the operator shall furnish proof that provisions have been made for the repair or replacement of equipment which becomes inoperative. Reasonable effort shall be taken to insure that faulty equipment shall not interfere with the proper operation of the facility and services provided.

–2.11.7 An adequate water supply and/or fire fighting equipment shall be readily available on site or on call to extinguish any and all fires. Fire fighting procedures shall be posted.

–2.11.8 Control of insects, other arthropods, and rodents shall be effected by means of a program directed by a qualified applicator of pesticides in accordance with the New Jersey Pesticide Control N. J. A. C. 7:20-1 et seq.

–2.11.9 Only vehicles displaying the New Jersey Bureau of Solid Waste Management registration number and a current registration indicator shall be admitted for unloading of any solid waste at or near the active tipping area of the solid wastes facility when commercial type collection or haulage vehicles (including not limited to compactor trucks, trailers, or any vehicle that tilts or uses other mechanical means to discharge it solid waste) are unloading or when other heavy equipment is operating at the tipping area.

–2.11.10 Operators of solid waste facilities may elect to provide one or more containers of sufficient capacity within a designated secure area under the facility's control (located a safe distance from the tipping area and the movement of associated equipment and commercial type collection and haulage vehicles) so that waste may be unloaded from non-commercial automobiles and stationwagons and deposited therein under supervision of facility personnel. Provision for bulky items may also be provided. The facility operator shall be responsible for the sanitary condition and orderly appearance of the designated area.

It shall be the operator's responsibility to remove the waste from the containers and to deposit it in the tipping area and/or remove the bulky items from the area and transfer them to the appropriate unloading area at such frequency so as not to exceed the capacity of the area or containers. Scavenging is prohibited.

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–2.11.11 After July 1, 1975, the solid waste content of all collection and haulage vehicles shall be determined by weight through the use of appropriate scales at the disposal facility. This subsection shall not apply to:

a. liquid or semi-liquid waste measured in gallons.
b. waste delivered by non-commercial automobiles or station-wagons.
c. waste delivered to solid waste facilities which receive less than twenty (20) trucks and less than five hundred (500) cubic yards, and less than one hundred (100) tons in any one day.
d. wastes the weight of which is determined by use of public scales.
e. vegetative waste delivered to solid waste facilities authorized to receive only such waste.

–2.11.12 The operator of a solid waste facility shall maintain a record of the quantity accepted for disposal of each category of waste listed on the registration statement. The compilation of the records for the previous twelve months shall be furnished on the annual update registration statement. In the event that scales were not used to physically weigh the waste, volume to weight conversion shall be made by means of formulae furnished by the Department.

–2.11.13 Radioactive materials regulated by the Atomic Energy Act of 1954 and lethal chemicals shall not be received or stored at any solid waste facility within the territory governed by the State of New Jersey without prior approval in writing by the authorities having jurisdiction in such matters and by the New Jersey Department of Environmental Protection.

–2.11.14 Pesticides, Hazardous Wastes, Chemical Wastes, Bulk Liquids and Semi-Liquids.

–2.11.14.1 *Responsibility of the Generator or Owner of the Waste.* It shall be the responsibility of the generator or owner of pesticides (or contaminated containers), hazardous wastes, chemical wastes, bulk liquids, and semi-liquids to identify and label such material in accordance with Part 172 et seq., Title 49, Code of Federal Regulations (D.O.T.). It shall be the responsibility of the generator or owner to assure that the selected carrier transporting such materials is one registered with the Bureau of Solid Waste Management, and that the shipment is consigned to a solid waste facility registered with and authorized by the Bureau for the disposal of that specific waste. A shipping document shall be furnished to the carrier by the generator or owner of the waste which lists all material contained in the shipment, their quantities, the designated disposal facility and any instructions necessary for their safe handling. The generator or owner of such waste, the registered operator of the

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solid waste facility, the authority having jurisdiction in such matters and the New Jersey State Department of Environmental Protection shall jointly determine the method of disposal. It shall be the responsibility of the

generator or owner of such wastes to furnish to the New Jersey Bureau of Solid Waste Management, annually by the 15th day of February, a list of all *hazardous waste* materials transferred from his control during the preceding calendar year. The list shall identify the material, the quantity, the type of container in which dispatched, its marking, the carrier including the N. J. B. S. W. M. code number, the date shipped, the shipping document reference number, and the destination.

–2.11.14.2 *Responsibility of the Registered Operator of the Solid Waste Facility.* It shall be the responsibility of the registered operator of each solid waste facility to maintain records and furnish to the New Jersey Bureau of Solid Waste Management a list of all *hazardous wastes* received for disposal, treatment, or storage during the past calendar year. The list shall be forwarded by the 15th day of February annually. The list shall identify the material, the source, quantity, type of container in which disposed or stored if any and how marked, carrier delivering the material (including the N. J. B. S. W. M. code number), the shipping document reference number, date received, type of treatment if any, and the location where disposed or stored (this last item should be exact enough to permit recovery of the material if so desired), or the destination if forwarded to another facility.

–2.11.15 *Infectious Waste*

The generator or owner of infectious waste shall be responsible for rendering such waste non-infectious prior to removal from the premises where generated and for certifying to the registered operator of the solid waste facility where assigned and the Bureau that such waste has been rendered non-infectious.

–2.12 *Guidelines and Criteria for Preparation of Engineering Designs*

–2.12.1 *General*

–2.12.1.1 A minimum of six (6) complete sets of drawings for each design shall constitute a submission.

–2.12.1.2 Individual drawing sheets shall not exceed 30″ x 42″ in size.

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–2.12.1.3 Each drawing sheet shall bear the raised seal of the New Jersey licensed professional engineer responsible for preparation of the design. It is recommended that a geologist be employed to prepare the subsurface data and interpretation.

–2.12.1.4 A key map shall be provided showing the general location of the proposed disposal facility. Key map is to be plotted on 1:24,000 U.S.G.S. topographical quadrangle.

–2.12.1.5 A plot plan which depicts the legal boundaries determined by survey for which clear title is held by the applicant shall be provided. If the property is leased by the applicant, a copy of the lease agreement shall accompany the plot plan.

–2.12.1.6 Lot and Block numbers of the property shall be provided.

–2.12.1.7 Approximate total acreage of the property shall be determined and shown.

–2.12.1.8 Location of the geographic center of runways of airports within two and one-half (2½) miles of the property line of the solid waste facility shall be shown.

–2.12.2 *Sanitary Landfills*

–2.12.2.1 The specific limits or portion of the proposed active landfill operation shall be clearly defined with permanent markers or equivalent. Review and approval of any submission will be restricted to only that portion of the total acreage for which all design criteria is provided.

–2.12.2.2 Existing topographical contours of the property and proposed final elevations shall be shown at a maximum of five (5) foot intervals. Horizontal scale shall be at least one (1) inch to two hundred (200) feet. Two (2) foot contour intervals and a scale of one (1) inch to one hundred (100) feet is preferred. Elevations shall be based on the New Jersey Geodetic Control Survey datum. Use of any other datum must be supported by an explanatory statement and an equation to the N. J. G. C. S. datum.

–2.12.2.3 The area wide sequence of development stages of the landfill operation shall be shown. A narrative description of the planned method of operation (including heavy equipment) shall be submitted to supplement the design drawing.

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–2.12.2.4 Soil borings of the property shall be provided in accordance with the following table:

Acreage	*Minimum Number of Borings*
1 –10	3
10 –50	6
50 –100	12
100–200	18
over 200	minimum 24

–2.12.2.5 All borings shall be to a minimum depth of ten (10) feet below the seasonally adjusted maximum ground water elevation or twenty (20) feet below the lowest elevation of the proposed fill.

–2.12.2.6 Profiles shall be shown for each boring giving the depths of each soil classification and the elevation of any ground water or aquifer encountered, and shall include the date each boring was taken.

–2.12.2.7 A geological and ground water map shall be provided showing ground water levels and the direction(s) of flowing for all surface and ground waters within a one-half (½) mile radius of the proposed landfill operation.

–2.12.2.8 All registered wells within a one-half (½) mile radius of the proposed landfill operation shall be plotted.

–2.12.2.9 All public buildings within a one-half (½) mile radius of the proposed landfill shall be plotted and identified.

–2.12.2.10 All surface and subsurface drains which are used to control the passage of water from areas on, or adjacent to, the landfill property shall be shown.

–2.12.2.11 If a design includes an impermeable liner under the fill area, the method of collection and treatment of leachate generated within the fill shall be detailed.

–2.12.2.12 All fill areas or excavations shall be shown to terminate no closer than fifty (50) feet from all property boundary lines.

–2.12.2.13 Detailed profile views for any excavation on the property and the manner of filling the excavation shall be shown.

–2.12.2.14 Detailed profile views showing grades and elevations for any and all dikes, berms or other pollution protective devices or techniques as may be required and

constructed, shall be provided. No grade or slope shall exceed a ratio of 2:1.

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–2.12.2.15 All proposed landscaping, beautification, and screening techniques shall be shown.

–2.12.2.16 The system to provide for venting and monitoring of gases generated within the fill shall be shown in detail.

–2.12.2.17 Monitoring wells to determine ground water quality shall be plotted and construction described.

–2.12.2.18 The estimated capacity of the site in tons shall be calculated, inplace density given, and projections made to determine the life expectancy of the site based on current and/or anticipated loadings.

–2.12.2.19 A completed Supplemental Engineering Data form shall be submitted with the design. (Forms are available from the Bureau of Solid Waste Management).

–2.12.2.20 An environmental impact statement, if required, shall be submitted to the Department.

–2.12.2.21 Copies of all departmental permits as may be required or written proof of application therefor, due to stream encroachment or flood plain involvement and copies of all titles for lands involved in riparian lands or wetlands (together with land use permits) shall be submitted.

–2.12.2.22 If known, use of the site after closure shall be detailed including the time frame for implementation.

–2.12.3 *Incinerators*

–2.12.3.1 The rated capacity (in both tons per day and tons per hour) of the facility shall be shown.

–2.12.3.2 The current daily loadings and any anticipated or projected future loadings shall be shown.

–2.12.3.3 Unloading and storage facilities shall be shown and explained in detail including capacities in cubic yards and time such facilities can be practically used based on current loadings.

–2.12.3.4 Any emergency unloading, storage facilities or disposal facility to be used when down time of the incinerator will exceed twenty-four (24) hours, shall be shown and explained.

–2.12.3.5 Alternate unloading locations or plans for transfer in the event down time of the facility exceeds forty-eight (48) hours shall be shown and explained.

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–2.12.3.6 Rodent and odor control techniques to be employed shall be explained.

–2.12.3.7 Daily quantity of residue tonnage from the facility shall be shown.

–2.12.3.8 Disposal location for all residue (including but not limited to by-products resulting from air pollution control devices, quench water, etc.) shall be made known.

–2.12.3.9 Any recycling or reclamation activities operated in conjunction with the facility either on the incoming solid waste or the outgoing residue, shall be described in detail.

–2.12.4 *Transfer Stations and Resource Recovery Facilities*

–2.12.4.1 A completed registration application form shall be submitted.

–2.12.4.2 A descriptive statement of the process used and operation at this facility shall be prepared and submitted.

–2.12.4.3 Site location map, including lot and block numbers, access roads and other geographic features shall be shown.

–2.12.4.4 Drawings of buildings and other structures–showing type of construction, layout and dimensions for unloading, storage, compaction, processing, and loading areas, type of floor, and closures shall be included.

–2.12.4.5 The means to control litter, odors, rodents, and insects shall be described.

–2.12.4.6 The description of equipment shall include type, capacity, and number of units.

–2.12.4.7 Daily capacity of the complete facility in tons shall be shown.

–2.12.4.8 Design capacity as to number and type of vehicles bringing solid waste to the facility daily shall be delineated.

–2.12.4.9 Design capacity as to number and type of transfer vehicles hauling waste or reclaimed material from the facility shall be shown.

–2.12.4.10 A description of provisions to handle unusual peak loadings, exceeding planned capacity shall be provided.

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–2.12.4.11 Emergency provisions for equipment breakdown or power failure shall be described.

–2.12.4.12 The maximum length of time solid waste will be stored in the facility shall be indicated.

–2.12.4.13 Measures taken to protect and monitor the quantity of ground water and nearby surface streams shall be shown if the station is to handle liquid and/or liquid-solid mixture wastes.

–2.12.4.14 Measures taken to monitor and control combustible gases where these will be generated shall be described in detail.

–2.12.4.15 Seal of the professional engineer responsible for the design is to be affixed on the plan.

–2.12.5 *Other Methods of Disposal*

–2.12.5.1 All appropriate Guidelines and Criteria from 7:26-2.12.1 to 2.12.4 shall be followed for the preparation of the engineering design and any such data and information as may be necessary so that the Bureau can make an evaluation shall be provided.

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7:26-3 Rules of the Bureau of Solid Waste Management Concerning Collection and Haulage

–3.1 *Improper Collection or Haulage Prohibited*

–3.1.1 The collection and haulage of organic and/or combustible matter or other forms of solid waste on the roadways and highways in this State shall be made only through the use of:

a. Collection and/or haulage systems established, operated and maintained in accordance with the regulations set forth in this subchapter.

b. Other methods of collection and haulage as may be approved by the State Department of Environmental Protection.

—3.2 *Registration*

—3.2.1 Registration statement; filing with the Department. No person shall engage or continue to engage in the collection and/or haulage of solid waste in this State without first filing a completed Registration Statement with the Bureau. The Registration Statement shall be signed by the person engaged in or desiring to engage in the collection and/or haulage of solid waste, shall be executed on forms prescribed by and furnished by the Bureau, and shall state such information necessary and proper to enforcement of this subchapter as the Department may require.

—3.2.2 Approved Registration. No person shall engage in the collection and/or haulage of solid waste in this State without having an Approved Registration from the Department.

—3.2.3 No person shall engage in the collection and/or haulage of solid waste in this State if such an operation does not meet the collector-hauler requirements listed in 7:26-3. In addition, the operation must comply with any other conditions or limitations which may be specified on the approved registration.

—3.2.4 Time for filing. Prior to May 1 in each calendar year, each registrant shall submit to the Department a statement updating the information contained in the registration statement. Such information shall be submitted on forms supplied by the Department. In no case shall the submission of an updating registration statement alter the conditions under which the approved registration is granted.

—3.2.5 Alteration of Registration Statement. The registrant shall notify the Department in writing within 30 days

of any change of information supplied on his current Registration Statement.

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—3.3 *Domestic Refuse*

—3.3.1 The provisions of this subchapter shall not be applicable to haulage in family passenger automobiles or station-wagons of family garbage or refuse off the premises where the family resides nor shall the provision of these rules be interpreted as permitting the haulage of domestic sewage in any manner other than that prescribed by law. vehicles not registered with the Bureau of Solid Waste Management are not permitted to discharge solid wastes at or near areas where commercial type collection or haulage vehicles are unloading or where heavy equipment is operating.

—3.4 *Collector-Hauler Requirements (General)*

—3.4.1 Length of service routes shall be kept consistent with the proper operation of trucks and/or equipment in order that the area or route services can be completed during a normal operating day.

—3.4.2 All collected solid waste shall be properly deposited at an approved facility in accordance with the New Jersey Administrative Code (N. J. A. C.) 7:26-1 and 7:26-2.

—3.4.3 Unless an emergency, such as inclement weather, equipment breakdown, or accident warrants, no solid waste shall be allowed to remain or be stored in any collection or haulage vehicles in excess of twenty-four (24) hours.

—3.4.4 No vehicle shall be used for collection and/or haulage if the design of the vehicle is such that any solid waste material will spill onto the roadways and highways of this State.

—3.4.5 No vehicle used for collection and/or haulage shall be used beyond its design capabilities or in such a manner that littering and spillage of solid wastes onto the roadways and highways of this State will occur.

—3.4.6 All vehicles used for the collection and/or haulage of solid waste shall be maintained in good working condition to protect the health and safety of the workmen and citizens of this State and to provide prompt and efficient service. The registered operator of any collection and/or haulage system shall provide a means of continuous service in the event an emergency arises.

—3.4.7 All workmen or collection crews operating solid waste collection systems shall take reasonable care to protect the property of customers being served. Any damage or spillage of solid waste as a result of the collector's actions shall be his responsibility.

—3.4.8 All vehicles used for the collection and haulage of solid waste shall properly and conspicuously display all numbers and decals assigned by the Bureau of Solid Waste Management.

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—3.4.9 Tarpaulins or covers shall be provided and used as needed while transporting solid wastes.

—3.5 *Collector-Hauler Requirements (Specific)*

—3.5.1 Sewage Sludge and Other Fecal Material

—3.5.1.1 All vehicles used for the collection and/or haulage of such wastes shall be of such a design so as to preclude any spillage or leakage onto the roadways and highways of the State.

—3.5.1.2 Sewage sludge and other fecal material shall not be inter-mixed with other wastes of a chemical or industrial nature for haulage to a disposal operation.

—3.5.2 Bulky Wastes

—3.5.2.1 All vehicles used for collection and/or haulage of such wastes shall be such a design so as to preclude any spillage onto the roadways and highways of the State.

—3.5.3 Radioactive Materials and Lethal Chemicals

—3.5.3.1 Radioactive materials regulated by the Atomic Energy Act of 1954 and lethal chemicals shall not be transported in or through the State of New Jersey without prior approval in writing by all authorities having jurisdiction in such matters and by the New Jersey Department of Environmental Protection.

—3.5.4 Hazardous and/or Chemical Wastes, Excluding All Radioactive Wastes.

—3.5.4.1 All collectors and haulers of such wastes shall obtain from the generator of such wastes a bill of lading listing the material(s) to be hauled. Such waste shall not be mixed with other categories of wastes in shipment.

—3.5.4.2 All collectors and haulers of such wastes are responsible for operating within existing laws governing the transportation of such materials including Chapter 128, PL 1950.

—3.5.4.3 All vehicles used for the collection and haulage of such wastes shall be of a design to preclude any spillage or leakage onto the roadways and highways of the State.

—3.5.4.4 Collectors and haulers of such wastes shall not transport drummed hazardous wastes whereby said drums or containers are damaged, rusted, leaking, or without proper tight fitting covers or lids.

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–3.5.4.5 All drums and containers of hazardous or chemical wastes in transport to a disposal facility shall be properly labeled in accordance with existing statute and regulations of the State of New Jersey.

–3.6 *Reserved*

–3.7 *Smoking, Smoldering, or Burning Solid Waste in Collection or Haulage Vehicles*

–3.7.1 No collector or hauler shall provide service where waste materials to be picked up and hauled show evidence of smoking, smoldering, or burning.

–3.7.2 All waste in transit that must be dumped in an emergency due to smoking, smoldering, or burning shall be the responsibility of the collector-hauler. The operator of the vehicle shall immediately notify the police and fire departments having jurisdiction. The collector or hauler shall be responsible for clean-up of all materials dumped in an emergency.

–3.8 *Reserved*

–3.9 *Reserved*

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7:26.4 RULES OF THE BUREAU OF SOLID WASTE MANAGEMENT CONCERNING FEES

–4.1 *General*

–4.1.1 In accordance with Chapter 461, P. L. 1971, there is hereby established a Fee Schedule. Said schedule shall apply to all sanitary landfill operations, incinerators, transfer stations, processing facilities, resource recovery facilities or any other methods of disposal requiring registration

with the Department, and shall include but not be limited to all vehicles used in collection and/or haulage of solid wastes.

–4.2 *Payment of Fees*

Fees shall be paid by certified check or money order and made payable to: Treasurer, State of New Jersey.

–4.3 *Fee Schedule*

–4.3.1 *Solid Waste Facilities*

Submission of an Engineering Design for review (per design)	$500.00
Submission of Registration Statement or Annually with Updated Registration Statement	500.00
Transfer of Registration	50.00

–4.3.2 *Solid Waste Collection and Haulage*

Submission of Registration Statement or Annually with Updated Registration Statement

First vehicle	45.00
Each additional vehicle on the same registration	5.00

The registration of a Solid Waste Collection and/or Haulage System is non-transferable.

–4.4 *Resubmission of Designs*

The fee for review of an engineering design for a solid waste facility will entitle the registrant to submit or resubmit all information found deficient on the first submission until such time as the approval of the engineering design is granted or denied.

–4.5 *Reserved*

NEW JERSEY STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF SOLID WASTE MANAGEMENT
P.O. BOX 2007
TRENTON, N.J. 08625

REGISTRATION STATEMENT FOR A SOLID WASTE FACILITY

A SEPARATE REGISTRATION IS REQUIRED FOR EACH SOLID WASTE FACILITY

INCOMPLETE OR IMPROPERLY PREPARED STATEMENTS WILL BE RETURNED.
— PRINT OR TYPE ONLY —

1. If the above name and address of registrant is incorrect or missing enter corrected information where indicated. (Use SSN ONLY if you do not have a FEID number)

2 F Federal Employer ID No. OR 2 S 6 8 Soc. Sec. No.

12 APPLICANT'S - LAST NAME 31 FIRST NAME 43 I 44 TITLE

45 COMPANY OR TRADE NAME

12 STREET ADDRESS

28 CITY 51 STATE 54 ZIP CODE 59 AREA 62 TELEPHONE NUMBER 65

2. 69 NEW STATEMENT 69 UPDATED STATEMENT 70 REGISTRATION NO.

3. TYPE ORGANIZATION (CHECK ONLY ONE)

12 SOLE PROPRIETOR 12 PARTNERSHIP 12 INCORPORATED 12 MUNICIPALITY
12 COUNTY 12 UNIT OF STATE GOV. 12 AUTHORITY
12 OTHER (EXPLAIN) _____

4. SOLID WASTE FACILITY DATA

14 STREET ADDRESS OF FACILITY 29 MUNICIPALITY (CITY)

32 COUNTY BLOCK NO. 62 LOT NO. 67 THROUGH LOT NO. 71

If property description has additional block and lot information, attach a separate sheet including all block and lot data. Check this box to indicate additional data. 75

A. LICENSED BY PUC 13 NO 13 YES (If yes give PUC Certificate No.) 18

B. ESTIMATED REMAINING LIFE OF THIS FACILITY. 19 YEARS AND 21 0 0 0 TONS
(BASED ON PRESENT USE RATE)

C. THIS PROPERTY OWNED 39 OR LEASED 39 BY APPLICANT

PAGE 1

APPENDIX A

D

6. PROPERTY TITLE DATA

A. CERTIFIED COPY OF TAX MAP SHOWING BLOCK & LOT NOS.
ATTACHED 20 PREVIOUSLY SUBMITTED 20 DATE SUBMITTED 21 MO | DAY | YR.

B. 37 OWNERS - LAST NAME 33 FIRST NAME 47 I
12 STREET ADDRESS
28 CITY 57 STATE 54 ZIP CODE

E

C. IF LEASED -
1. LEASE ENCLOSED 39 2. PREVIOUSLY SUBMITTED 39 DATE 40 MO | DAY | YR.

7. ENGINEERING DESIGN PREPARED BY LICENSED PROFESSIONAL ENGINEER (6 COPIES)
ATTACHED 66 UPDATED DESIGN 66 PREV. SUBMITTED 66 DATE 67 MO | DAY | YR.

F

8. A. PARTNERS OR OFFICERS OF CORPORATION, GOVERNMENTAL BODY OR PUBLIC AUTHORITIES.
12 LAST NAME 31 FIRST NAME 43 I 44 TITLE

G

12 31 43 44

H

12 31 43 44

I

12 31 43 44

J

B. CORPORATION DATA
REGISTERED IN - 12 STATE 12 COUNTY DATE REG. 28 MO | DAY | YR.
31 AGENT - LAST NAME 49 FIRST NAME 61 I

K

12 AGENT STREET ADDRESS
28 AGENT - CITY 51 STATE 54 ZIP CODE 59 AREA 62 AGENT TELEPHONE NO. NUMBER 65

L

9. NATURE OF OPERATION (CHECK ALL APPLICABLE ITEMS)

13 SANITARY LANDFILL 14 INCINERATOR
16 COMPOSTING FACILITY 16 CHEMICAL PROCESSING & TREATMENT
17 RESOURCE RECOVERY 16 TRANSFER STATION
16 OTHER (EXPLAIN) _____

APPENDIX A

PAC

ENTER FEID OR SSN HERE [ ][ ][ ][ ][ ][ ][ ][ ][ ]

10. MATERIAL FOR DISPOSAL:

REQUESTED:		FOR OFFICE USE ONLY APPROVED
(a) SOLIDS:		
20[ ]	MUNICIPAL (HOUSEHOLD, COMMERCIAL, INSTITUTIONAL)	21[ ]
22[ ]	DRY SEWAGE SLUDGE	23[ ]
24[ ]	BULKY WASTES	25[ ]
26[ ]	CONSTRUCTION AND DEMOLITION	27[ ]
28[ ]	PESTICIDES - DRY	29[ ]
30[ ]	PESTICIDE CONTAINERS	31[ ]
32[ ]	HAZARDOUS WASTES - DRY	33[ ]
34[ ]	CHEMICAL WASTES - DRY	35[ ]
36[ ]	JUNKED AUTOS	37[ ]
38[ ]	TIRES	39[ ]
40[ ]	DEAD ANIMALS	41[ ]
42[ ]	LEAVES AND CHOPPED TREE WASTES	43[ ]
44[ ]	AGRICULTURE AND FOOD PROCESSING WASTES	45[ ]
46[ ]	TREE STUMPS	47[ ]
48[ ]	OIL SPILL CLEAN-UP WASTES	49[ ]
(b) LIQUIDS:		
50[ ]	WASTE OIL	51[ ]
52[ ]	BULK LIQUIDS AND SEMI-LIQUIDS	53[ ]
54[ ]	SEWAGE: SEPTIC OR OTHER FECAL LIQUIDS	55[ ]
56[ ]	PESTICIDE LIQUIDS	57[ ]
58[ ]	HAZARDOUS WASTE LIQUIDS	59[ ]
60[ ]	CHEMICAL WASTE LIQUIDS	61[ ]

11. OPERATIONAL DATA

A. INDICATE ACTUAL INCLUSIVE DATES USED IN REPORTING THIS DATA.

PERIOD FROM 13 MO. | DAY | YR. [ ][ ] | [ ][ ] | [ ][ ] (12 MONTHS) PERIOD TO 19 MO. | DAY | YR. [ ][ ] | [ ][ ] | [ ][ ]

B. Enter total Tonnage or Gallons of Solid and Liquid wastes received at your facility for the Past 12 MONTHS for each category listed:

(1) SOLID WASTES — TOTAL TONNAGE

a. MUNICIPAL (HOUSEHOLD, COMMERCIAL, INDUSTRIAL)	25		a
b. DRY SEWAGE SLUDGE	33		b
c. BULKY WASTES	41		c
d. CONSTRUCTION & DEMOLITION	49		d
e. PESTICIDES - 1. DRY	57		e
f. 2. CONTAINERS	65		f
g. HAZARDOUS WASTE - DRY	13		g
h. CHEMICAL WASTE - DRY	21		h
i. JUNKED AUTOS	29		i
j. TIRES	37		j
k. DEAD ANIMALS	45		k
l. LEAVES AND CHOPPED TREE WASTES	53		l
m. AGRICULTURE AND FOOD PROCESSING WASTE	61		m
n. TREE STUMPS	69		n
o. OIL SPILL CLEAN-UP WASTE	13		o
(12 MONTHS) TOTAL SOLID WASTES RECEIVED	21		

APPENDIX A

11. OPERATIONAL DATA (CONTINUED FROM PAGE - 3)

(2) LIQUID WASTES — TOTAL GALLONS

a. WASTE OIL	31	
b. BULK LIQUID WASTES	42	
c. SEWAGE: SEPTIC OR OTHER FECAL	53	
d. PESTICIDE LIQUIDS	64	
e. HAZARDOUS LIQUIDS	13	
f. CHEMICAL LIQUIDS	24	
(12 MONTHS) TOTAL LIQUIDS RECEIVED	35	

C. Enter total Tonnage or Gallons of Solid or Liquid Wastes recovered at your facility during the past 12 months for each category listed:

(1) RECYCLED SOLID WASTES — TOTAL TONNAGE

a. FERROUS METALS	13	
b. NON-FERROUS METALS	21	
c. NEWSPRINT	29	
d. CORRUGATED	37	
e. OTHER PAPER PRODUCTS	45	
f. GLASS	53	
g. CHEMICALS - DRY	61	
h. PLASTICS	69	
i. TIRES	13	
j. JUNKED AUTOS	21	
TOTAL RECYCLED SOLIDS		

(2) RECYCLED LIQUIDS — TOTAL GALLONS

a. OIL	29	
b. CHEMICAL SOLVENTS	40	
c. OTHER CHEMICAL LIQUIDS	51	
TOTAL RECYCLED LIQUIDS		

12. FEE SCHEDULE
(Refer to N.J.A.C. 7:26-4 FOR FEE SCHEDULE)

All fees must be submitted with this statement by CERTIFIED CHECK or MONEY ORDER - Payable to "TREASURER, STATE OF NEW JERSEY."

Check or Money Order No. 13 [ ][ ][ ][ ][ ][ ][ ][ ][ ] AMOUNT 23 [ ] DOLLARS [ ][ ][ ] CENTS [ ][ ]

I CERTIFY THAT THE INFORMATION SUBMITTED ON THIS FORM AND ANY ATTACHMENTS APPENDED ARE TO THE BEST OF MY KNOWLEDGE. MY ID NUMBER AND SIGNATURE ARE ON ALL ATTACHMENTS.

SIGNATURE _____ TITLE _____ 29 MO. | DAY | [ ][ ] | [ ][ ] DATE

FOR OFFICIAL USE ONLY

CERT. DATE: MO. | DAY | YR. [ ][ ] | [ ][ ] | [ ][ ]

ENG. DES. APPR.: _____ SIGNATURE APPENDIX A

Appendix B to Appendix N. Page 1.

Special Instructions for Completing Items 4, 11 and 12 of Registration Statement for a Solid Waste Facility

A. For Public Utility Commission Certificate Number (Item 4A) in excess of four digits use only the last four digits and place an asterisk (*) to the right of the blocks.

B. Fees (Item 12) annually with submission of updated registration statement = $500.00

submission of engineering designs = 500.00

transfer of registration = 50.00

C. To calculate tonnage of solid waste *received* (Item 11B) (conversion from cubic yards)

1. Municipal Waste (Household, Commercial, Institutional)

in non-compacting vehicles—multiply cubic yards by 0.12
in compactor trucks of 20 c. y. capacity or less—multiply cubic yards by 0.25
in compactor trucks of between 21 and 25 c. y. capacity—multiply cubic yards by 0.35
in compactor trucks of more than 25 c. y. capacity—multiply cubic yards by 0.40

2. Construction, Demolition, Bulky Items, Whole Tires, Leaves and Chopped Tree Wastes, Tree Stumps, Agriculture and Food Processing Wastes, Dead Animals and Shredded Tires—Multiply cubic yards by 0.20

3. Pesticides (dry), Hazardous Wastes (dry), Chemical Wastes (dry)—Multiply cubic yards by 2.0

4. Oil Spill Clean-up Wastes—Multiply cubic yards by 0.45

5. Dry Sewage Sludge and Pesticide Containers—Multiply cubic yards by 0.15

6. Junked Autos 2.0 tons per car regardless of cubic yards.

D. To calculate remaining life of facility (Item 4B) in years and tons (NOTE: applicable only to sanitary landfills).

1. Convert tonnage received to total in-place volumes (cubic yards) by multiplying the annual tonnage received for each category by the following factors and then finding the sum:

Category	*Factor*
Municipal (household, commercial, industrial)	(2.0)
Dry sewage sludge	(1.8)
Bulky Wastes	(10.0)
Construction and demolition	(6.7)
Pesticides (dry)	(0.5)
(containers)	(1.8)
Hazardous wastes (dry)	(0.5)
Chemical wastes (dry)	(0.5)
Junked autos	(*)
Tires—rubber (shredded)	(1.2)
(whole)	(10.0)

Appendix B to Appendix N. Page 2.

Category (continued)	*Factor*
Dead animals	(1.2)
Leaves and chopped tree wastes	(10.0)
Agriculture and food processing waste ..	(1.2)
Tree Stumps	(5.0)
Oil spill clean-up waste	(2.5)

° Each car three (3) cubic yards

2. Life remaining in years:

$$\text{Years} = \frac{1613\ A\ (H\text{-}C)}{y} \times 0.85$$ where:

Years = remaining life of facility in years
1613 = conversion factor
A = number of acres remaining to be filled °
H = overall height of remaining lifts in feet
C = total thickness of cover material in feet
y = sum of in-place volume (in cubic yards) received annually
0.85 = correction factor (allowing for required boundaries and side slopes)

° If a partial lift remains to be filled, calculate this fraction separately—then combine.

3. Life remaining in tons:

Tons = Years x Sum of the annual tons received

NEW JERSEY STATE DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF SOLID WASTE MANAGEMENT
P.O. BOX 2807 TRENTON, N.J. 08625

REGISTRATION STATEMENT FOR A SOLID/LIQUID WASTE COLLECTOR OR HAULER

PRINT OR TYPE ONLY
INCOMPLETE OR IMPROPERLY PREPARED APPLICATIONS WILL BE RETURNED.
—COMPLETE BOTH SIDES OF FORM—

1. If the above name and address of registrant is incorrect or missing enter only the corrected information where indicated. Use SSN ONLY if you do not, have a FEID.

1 FEDERAL EMPLOYER ID NO. F FEID —OR— SOCIAL SECURITY NUMBER SSN S
APPLICANTS NAME - LAST | FIRST | I | TITLE
COMPANY OR TRADE NAME

2 STREET ADDRESS
CITY | STATE | ZIP CODE | AREA | TELEPHONE NUMBER

2. NEW STATEMENT UPDATED STATEMENT REGISTRATION NO.

3. TYPE ORGANIZATION (Check only one) (COL 13)
1 PROPRIETOR 2 PARTNERSHIP 3 INCORPORATED 4 MUNICIPALITY
5 COUNTY 6 UNIT STATE GOV. 7 AUTHORITY 8 HOMEOWNER
9 OTHERS HAULING OWN WASTE

4. TYPE OF WASTE (Check all applicable areas) (COLS. 14-21)
(14) 1 MUNICIPAL (HOME, COMM, INSTITU.) (18) 5 SEPTIC TANK WASTE
(16) 2 DRY CHEMICAL (INCL. HAZARDOUS) (17) 6 SEWAGE PLANT SLUDGE
(18) 3 CONSTRUCTION & DEMOLITION (19) 7 LIQUID CHEMICAL (INCL. HAZARDOUS)
(20) 4 TREE & YARD WASTE (21) 8 INDUSTRIAL & OTHER

3 5. PUC LICENSED? NO YES PUC CERTIFICATE NUMBER

6. FEES MUST BE SUBMITTED BY CERTIFIED CHECK OR MONEY ORDER-PAYABLE TO "TREASURER, STATE OF NEW JERSEY" REFER TO N.J.A.C. 7:26-4 FOR FEE SCHEDULE.

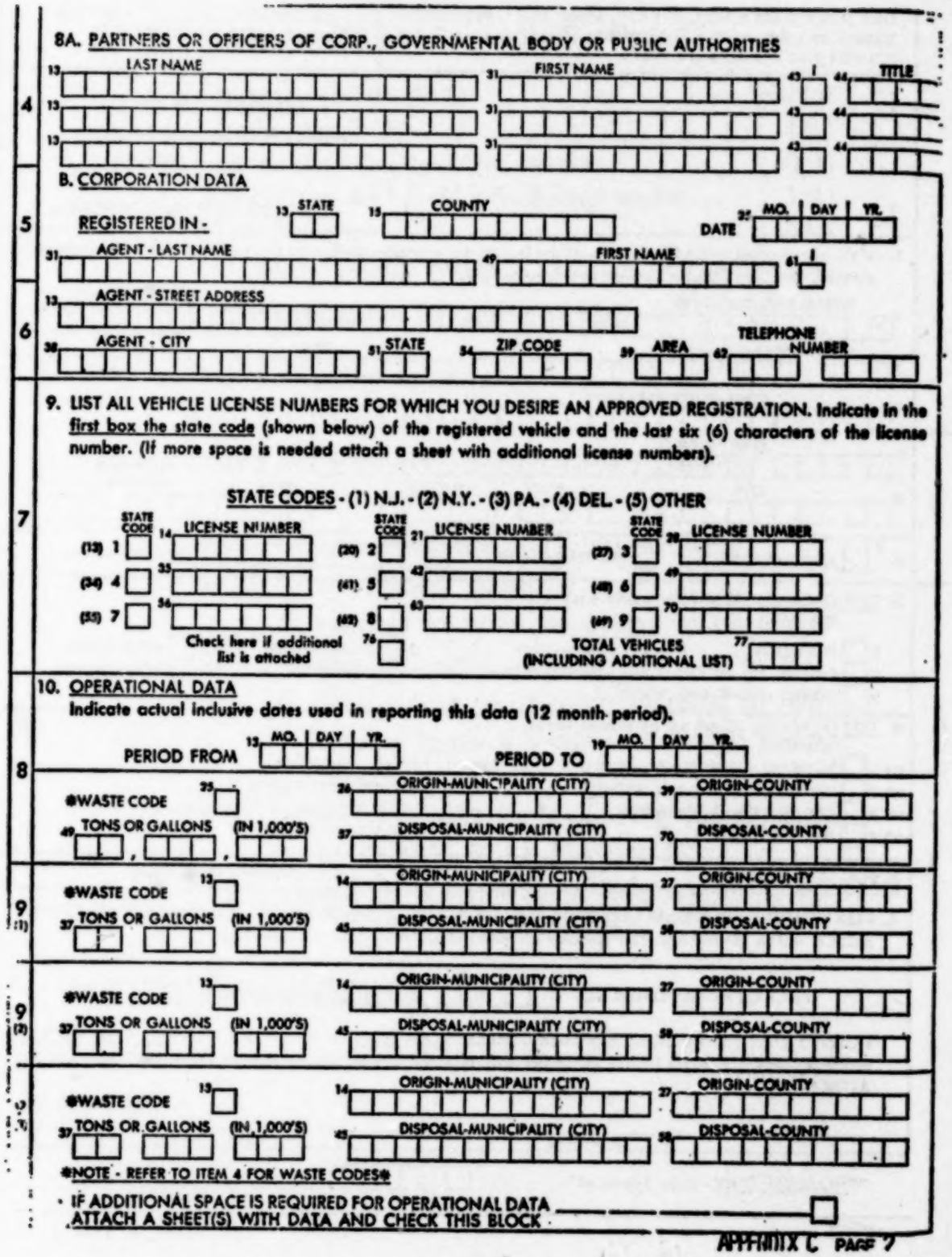
CHECK OR MONEY ORDER NO. AMOUNT .00

I CERTIFY THAT THE INFORMATION SUBMITTED ON BOTH SIDES OF THIS FORM AND ANY ATTACHMENTS APPENDED ARE TRUE TO THE BEST OF MY KNOWLEDGE. MY ID NUMBER AND SIGNATURE ARE ON ALL ATTACHMENTS.

SIGNATURE | TITLE | DATE (MO. DAY YR.)

OFFICIAL USE ONLY - Date Approved (MO. DAY YR.) SIGNATURE

APPENDIX C PAGE 1



8A. PARTNERS OR OFFICERS OF CORP., GOVERNMENTAL BODY OR PUBLIC AUTHORITIES

4 — LAST NAME | FIRST NAME | I | TITLE

B. CORPORATION DATA

5 — REGISTERED IN - STATE | COUNTY | DATE MO. DAY YR.

AGENT - LAST NAME | FIRST NAME | I

6 — AGENT - STREET ADDRESS

AGENT - CITY | STATE | ZIP CODE | AREA | TELEPHONE NUMBER

9. LIST ALL VEHICLE LICENSE NUMBERS FOR WHICH YOU DESIRE AN APPROVED REGISTRATION. Indicate in the first box the state code (shown below) of the registered vehicle and the last six (6) characters of the license number. (If more space is needed attach a sheet with additional license numbers).

7 — STATE CODES - (1) N.J. - (2) N.Y. - (3) PA. - (4) DEL. - (5) OTHER

STATE CODE | LICENSE NUMBER (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9)

Check here if additional list is attached

TOTAL VEHICLES (INCLUDING ADDITIONAL LIST)

10. OPERATIONAL DATA

Indicate actual inclusive dates used in reporting this data (12 month period).

8 — PERIOD FROM MO. DAY YR. | PERIOD TO MO. DAY YR.

9 (1) — *WASTE CODE | ORIGIN-MUNICIPALITY (CITY) | ORIGIN-COUNTY | TONS OR GALLONS (IN 1,000'S) | DISPOSAL-MUNICIPALITY (CITY) | DISPOSAL-COUNTY

9 (2) — *WASTE CODE | ORIGIN-MUNICIPALITY (CITY) | ORIGIN-COUNTY | TONS OR GALLONS (IN 1,000'S) | DISPOSAL-MUNICIPALITY (CITY) | DISPOSAL-COUNTY

9 (3) — *WASTE CODE | ORIGIN-MUNICIPALITY (CITY) | ORIGIN-COUNTY | TONS OR GALLONS (IN 1,000'S) | DISPOSAL-MUNICIPALITY (CITY) | DISPOSAL-COUNTY

NOTE - REFER TO ITEM 4 FOR WASTE CODES

IF ADDITIONAL SPACE IS REQUIRED FOR OPERATIONAL DATA ATTACH A SHEET(S) WITH DATA AND CHECK THIS BLOCK

APPENDIX C PAGE 2

Appendix D to Appendix N.

Special Instructions for Completing Items 5, 6 and 10 of Registration Statement for a Solid/Liquid Waste Collector or Hauler

A. PRIVATE AUTOMOBILES AND STATION WAGONS NEED *NOT* REGISTER.

B. In order to properly complete Item 10 of the *Registration Statement for a Solid/Liquid Waste Collector or Hauler*, it may be necessary to convert cubic yards of waste to tons where the actual weight of the wastes collected have not been determined through the use of scales. To convert from cubic yards to tons, simply multiply the volume (in yards) by the appropriate factor listed below.

1. *For Municipal-Type Wastes (Household, Commercial, Institutional):*

   in Non-Compacting Vehicles: Multiply cubic yards by 0.12

   in Compactor Trucks up to 20 c.y. capacity: Multiply cubic yards by 0.25

   in Compactor Trucks with capacity between 21 and 25 c.y.: Multiply cubic yards by 0.35

   in Compactor Trucks with capacity over 25 c.y.: Multiply cubic yards by 0.40

2. *For Construction, Demolition, Yard Wastes, and Other Bulky Wastes:*

   Multiply cubic yards by 0.20

3. *For Dry Chemicals (liquids should be entered as gallons):*

   Multiply cubic yards by 2.0

C. For *out-of-state wastes only* (Item 10), enter the name of the state (New York-Penna.-Delaware-Other) in blocks marked County.

D. For Public Utility Commission Certificate Number Item 5) in excess of four digits, use only the last four digits and place an asterisk (*) to the right of the blocks.

E. Fees (Item 6) Annually:

1st vehicle (each registrant) = $45.00

each additional vehicle (same registrant) = 5.00

F. Item 10—Report actual tons of solid materials and thousands of gallons for liquid materials.

EXAMPLE:

22 cubic yard compactor, 5 loads per day municipal waste, 6 days per week, 52 weeks per year (for this example use factor of 0.35)

22	x	5	x	6	x	52	x	0.35	=	12012
cubic yards per load		loads per day		days per week		weeks per year		factor for vehicle and type of waste		Tons per year

Return application No LATER THAN JUNE 15, 1974

APPENDIX O.

Pereira Deposition, Dated March 13, 1974.

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particular site Joe Miller has all the ground water data and he is in the ground water section.

When it comes to a ground water, the formation, the location and so on and so forth, they turn to me.

Then, of course, Dr. Kemball Widmer, who is our Chief, as in all offices where the brass is concerned, he would have the ultimate say.

Mr. Meisel: That is all I have.

• • •

LINO F. PEREIRA, sworn.

DIRECT EXAMINATION.

By Mr. Meisel:

Q. Mr. Pereira, I am going to ask you a series of questions.

The purpose of the questions is to in no way trick you but simply to elicit answers to the questions that are asked.

If you do not understand a question at any time or if the question needs to be rephrased for you to understand it, please ask me and I will do so.

A. Right.

Q. Could you please state your place of employment.

A. I work for the New Jersey Department of Environmental Protection, the Bureau of Solid Waste Management

[65]

in the Division of Environmental Quality.

Q. What is your position in that Bureau?

A. I am principal environmental engineer with that Bureau.

Q. How long have you served in that capacity?

A. For approximately 10 months.

Q. Were you employed by the State of New Jersey prior to that time?

A. Yes. I have been employed by the State and specifically the Bureau of Solid Waste Management since early June of 1970.

Q. In what capacity were you employed prior to being employed as principal engineer?

A. For the first year of my employment I was employed with the title of Chemical Engineer Trainee.

For the subsequent year I was employed as an Assistant Environmental Engineer.

For approximately 11 months thereafter I was employed as a senior environmental engineer and since that time I have held the title of Principal Environmental Engineer.

Q. Were you employed for any other concern prior to coming with the State?

A. Not on a full-time basis, that is, not other than summer work and part-time work while I was in college.

Q. When did you graduate from college?

[66]

A. In 1970.

Q. With what degree?

A. Bachelor of Science in Chemical Engineering.

Q. Do you hold any license issued by the State of New Jersey?

A. Not any license, not as a licensed professional engineer although I am registered with the Board of Professional Engineers under Title 45 as an engineer in train-

ing, which is a prerequisite for obtaining a license as a professional engineer.

Q. I notice that you have obtained a BS in Chemical Engineering.

Did you have any specific course work concerning sanitary engineering?

A. None specifically concerning sanitary engineering although a number of the courses one is required to take for chemical engineering are also required by sanitary engineering.

Q. Are you familiar with Public Law 1973 Chapter 363 passed by the State of New Jersey, being an act to prohibit any person from bringing into this state any solid and liquid waste which originated or was collected outside the state and supplementing the Waste Control Act approved February 21, 1973?

A. Yes, I am.

• • •

[87]

department are based largely upon the state of the art at this time and not upon the threat or not necessarily upon the threat to the health, safety and welfare.

Q. I would request that the last question that I asked be answered with a Yes or No because your response did not answer that question.

Mr. Meisel: Read it back, please.

(The reporter read the pending question.)

Mr. First: If you can answer that Yes or No, go ahead.

A. It is a rather difficult question to answer.

Q. The standards either are or are not adequate. It seems to me that it can be answered Yes or No.

A. My answer would be as they are now promulgated they are not adequate, in my opinion.

Q. Are the standards as proposed in the proposed rules of the Bureau of Solid Waste Management adequate to protect the public health, safety and welfare or the quality of the environment?

A. Only insofar as those standards are met by the operation.

Q. All right. So if they are met is your answer Yes?

A. My answer is Yes but it is qualified to the extent that sometimes it is not feasible or possible to men-

• • •

[99]

know about.

Q. How does the Department of Environmental Protection compute the life expectancy of a particular landfill site?

A. The only method or the method that the department has used and does use in computing the life expectancy of a sanitary landfill site utilizes the information submitted with the engineering design, that information being the life expectancy of the site as calculated by the design engineer and the tonnage received at the site per week.

The calculation by the department assumes that the tonnage will remain constant and that the engineer calculated his life expectancy on that constant tonnage and the calculation involves taking the tons per week—well, I can probably stop here and say that for any particular site the life expectancy is given to us in the engineering design by the licensed professional engineer who provided it and it is assumed that he does so based on current tonnages or expected tonnages at the site.

Q. Let us suppose that it is a 200-acre site, that the site is uniform throughout and as a result there are no special problems, the entire site is useful, that 10,000 tons per week is brought to that site, that the site will be built up by 50 feet, that one is using the usual six inches of daily cover and 2 feet of final cover, what would

[100]

the anticipated life expectancy of that site be, utilizing the best compaction methods available in the state of the art?

A. We are speaking about a 200-acre site by 50 feet in depth, uniformly 50 feet across the entire thing?

Q. That is correct.

A. And you were asking for the maximum amount of solid waste that can be placed therein?

Q. I am asking for the anticipated life expectancy of the site.

A. Could you give me the rate at which tonnage is brought in again?

Q. 10,000 tons per week.

A. Are we pre-supposing here that the operator utilizes the space to the maximum by under existing standards creating each lift as high as is permitted under existing standards?

Q. Yes, we are.

A. Are you asking me to calculate it or do you want to know how we would calclulate it?

Q. I am asking you to calculate it.

A. My calculations bring this to over 12 years or 12.4 years in fact, assuming that one-fifth of the volume is consumed by soil cover.

Q. What is the expected or anticipated life

[101]

expectancy of landfills presently existing in the State of New Jersey?

A. That is very difficult to calculate because of a number of factors.

Our best estimate is that the existing landfills in the state have no more than 10 years of life.

Q. Would the life expectancy of existing landfills be increased by using a variety of processing alternatives to reduce weight and/or volume of solid waste?

A. Yes, I believe so.

Q. Has there been any estimate as to how long that life expectancy would be extended by using such processing alternatives?

A. No, there hasn't been any estimate to my knowledge.

Q. Has there been any estimate as to the availability of additional acreage in the State of New Jersey for sanitary landfill purposes?

A. No estimate has been made but noting the establishment of new sanitary landfills, the rate of that establishment is low compared to the frequency with which landfills cease to exist in this state.

Q. Can new sanitary landfills be established in the State of New Jersey?

A. Yes, I believe they can be established.

[102]

Q. You indicated earlier that certain kinds of land may be more suitable than other kinds of land for sanitary landfill purposes.

A. That's correct.

Q. Is there any estimate as to the number of acres of the most suitable land for sanitary landfill purposes which presently exists in the State of New Jersey?

A. I find that a very difficult question to answer because, first, it speaks to the relative suitability of one piece

of land over another piece of land for the use of sanitary landfill.

If one defines one's standards stringently enough, I suppose it is possible to end up with very little square feet of land that is entirely suitable.

Q. Under existing standards in the State of New Jersey which could not be used for sanitary landfill purposes?

A. Yes.

Q. What kind of land could not be used?

A. Lands which are, for instance, protected in their natural state as are flood plains, wetlands, various tidal lands existent in the state as well as, of course, other restrictions such as local land use requirements so far as they apply to sanitary landfill sites.

[103]

Q. I am not speaking to whatever local land use requirements there might be.

A. You are speaking only of environmental considerations?

Q. Approximately how many acres would you calculate there are involved in the kinds of land you suggested would be absolutely unsuitable or unusable for sanitary landfill purposes?

A. I don't know.

Q. Does it represent a substantial portion of the land of the State of New Jersey in terms of the total land area of the state or does it represent an insubstantial total land area taken the total land area of the state?

A. Again I don't know because I don't deal specifically with those lands.

I can only answer that in my experience with the review of designs and the approval of existing facilities

in the state that a substantial portion of the existing facilities, sanitary landfills in the state does now or did consist of those lands.

Q. Who is responsible for working in those areas?

A. The Wetlands Act is administered specifically by the Wetlands Section in the Division of Marine Services in the Department of Environmental Protection.

The flood plain requirements are administered speci-

• • •

[112]

Q. Is it the volume of solid waste which causes a threat?

A. Yes, in terms of its tonnage, the actual quantity of waste, the degree of threat is directly proportionate to the tonnage of waste disposed.

Q. If there was less tonnage would the threat or could the threat be diminished to a point where it would not pose a substantial or material threat?

A. I suppose it could but I could not possibly put my finger on the tonnage that would not pose a substantial or material threat.

It may only be one ton. I don't know.

Q. Can New Jersey dispose of all or a portion of its solid waste outside the State of New Jersey?

A. Can it do so?

Q. Yes.

Mr. First: You mean can the people of the state?

Mr. Meisel: Yes.

A. As far as I know under existing legislation it can be done. It is possible.

Q. Are there instances in which communities in New Jersey dispose of all or a portion of the solid or liquid waste originating in those municipalities outside of the State of New Jersey?

[113]

A. There have been instances in the past and even in the recent past, if one considers 1971 the recent past. I am not familiar with the communities or the quantities after 1971.

Q. Does the City of Phillipsburg dispose of substantially all its solid waste outside the State of New Jersey?

A. It did in the calendar year 1971 as far as I know.

Q. Are there sanitary landfill facilities outside of the State of New Jersey which accept solid waste which originates inside of the State of New Jersey?

A. I don't know if there are sanitary landfill facilities.

Our records merely indicate that in the Calendar year 1971 some wastes were exported from the state to disposal sites outside the state.

Q. Has the Department of Environmental Protection explored the question as to whether a greater percentage than now exists of solid waste originating in New Jersey can be disposed of outside the State of New Jersey?

A. You mean by that have we contemplated sending more out?

Q. No. I am asking if you have looked into alternatives, whether there are facilities to which you could

[114]

send solid waste originating in New Jersey which exist outside the State of New Jersey.

A. I can think of no effort on our part to look into that at all.

Our planning for Solid Waste Management has assumed that New Jersey will bear the responsibility for its own wastes.

The planning has gone on accordingly.

Mr. Meisel: I think we can break for the day.

• • •

APPENDIX P.

Filed March 21, 1974

JAMIESON, WALSH, McCARDELL, MOORE
AND PESKIN,
a Professional Corporation
One West State Street
Trenton, N. J. 08608
(609) 396-5511
Attorneys for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION

Docket No. L-15068-73 P. W.

Civil Action

CITY OF PHILADELPHIA, etc., et al
Plaintiffs

v.

STATE OF NEW JERSEY, etc., et al
Defendants

NOTICE OF MOTION

TO: WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants
State House Annex
Trenton, New Jersey 08625

SIR:

Please take notice that the undersigned, attorneys for plaintiffs, will apply to the Superior Court of New Jersey,

Mercer County Court House, Trenton, New Jersey on Friday, March 22, 1974 at 9:00 A. M. or as soon thereafter as counsel may be heard, for summary judgment in favor of plaintiffs only upon the issues of federal preemption and discrimination against interstate commerce in violation of Art. 1, Sec. 8, cl. 3 of the United States Constitution; and plaintiffs will make further application for an order to set the date of hearing on the merits of the matter, if such hearing is necessary, on Monday, April 15, 1974, or upon such other day as may be ordered by the court and not on Monday, March 25, 1974 as presently scheduled.

On or before Monday, March 18, 1974, there will be served upon defendants the documents upon which plaintiffs will rely at the hearing on this motion.

JAMIESON, WALSH, McCARDELL, MOORE
and PESKIN
A Professional Corporation
by: ARTHUR MEISEL
Arthur Meisel

Dated: March 14, 1974

APPENDIX Q.

It is thus evident that the court must consider *"all the relevant facts and circumstances."* At this stage of the litigation *sub judice* the Court has not had an opportunity to consider any of the relevant facts and circumstances except for affidavits submitted in favor of and in opposition to the issuance of *ad interim restraints*. The Supreme Court has stressed that:

> *". . . state laws will not be invalidated without the support of relevant factual material which will 'afford a sure basis' for an informed judgment.* Terminal R. Asso. v. Brotherhood of R. Trainmen, supra (318 U. S. 8, 87 L. ed. 578, 63 S. Ct. 420); Southern R. Co. v. King, 217 U. S. 524, 54 L. ed. 868, 30 S. Ct. 594.
>
> • • •
>
> "Hence the matters for ultimate determination here are the nature and extent of the burden which the state regulation of interstate trains, adopted as a safety measure, imposes on interstate commerce, and *whether the relative weights of the state and national interests involved are such as to make inapplicable the rule. . ."* *Southern Pacific Co. v. Arizona*, 325 U. S. 761, 770, 89 L. Ed. 1915, 1925, 65 S. Ct. 1515 (1944) (emphasis added).

Among those proofs which the court must consider are: the nature and extent of the dangers to the health, safety, welfare and environment of New Jersey presented by the disposal of wastes in New Jersey; the nature and extent of the solid waste crisis in New Jersey; the rapid exhaustion of landfill life in New Jersey; the volume of out-of-state waste being disposed of in New Jersey; the severe limiting effects on the future development of property which has been used for sanitary landfill purposes; the extent of the affect on interstate commerce.

• • •

APPENDIX R.

WILLIAM F. HYLAND
Attorney General Of New Jersey
Attorney for Defendants-Appellants
State House Annex
Trenton, New Jersey 08625

By: MARK L. FIRST
Deputy Attorney General
(609) 292-4997

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION—MERCER COUNTY
DOCKET No. L-15068-73 P. W.

Civil Action

CITY OF PHILADELPHIA, etc., et al.,
Plaintiffs-Respondents,

v.

STATE OF NEW JERSEY, etc., et al.,
Defendants-Appellants.

NOTICE OF APPEAL.

To: CLERK OF THE COURT
HONORABLE GEORGE Y. SCHOCH
Judge, Superior Court of New Jersey
Mercer County Court House
Trenton, New Jersey 08607

HERBERT F. MOORE, ESQ.
Jamieson, Walsh, McCardell, Moore and Peskin, Esqs.
One West State Street
Trenton, New Jersey 08608

VINCENT DOTOLI, ESQ.
Interstate 287 and McKinley Street
South Plainfield, New Jersey 07080

SIRS:

NOTICE IS HEREBY GIVEN that all defendants, State of New Jersey, Department of Environmental Protection of the State of New Jersey and Richard J. Sullivan, Commissioner of the Department of Environmental Protection of the State of New Jersey, appeal to the Superior Court of New Jersey, Appellate Division, from the final judgment of the Superior Court, Law Division, Mercer County, entered on March 26, 1974, by the Honorable George Y. Schoch, declaring P. L. 1973, c. 363 unconstitutional as violative of Article I, Section 8, Clause 3 of the Constitution of the United States in favor of plaintiffs, City of Philadelphia, Pennsylvania, City of Glen Cove, Long Island, New York, Landfill and Development Company, MAC Sanitary Landfill, Inc., Kinsley's Landfill, Inc. and DeLorenzo-Interstate Waste Removal Co., Inc.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants-Appellants

BY: MARK L. FIRST
Mark L. First
Deputy Attorney General

DATED: April 19, 1974

I hereby certify that there was no testimony taken in the above case. The matter was decided on summary judgment.

MARK L. FIRST
Mark L. First
Deputy Attorney General

APPENDIX S.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants-Appellants
State House Annex
Trenton, New Jersey 08625

By: MARK L. FIRST
Deputy Attorney General
(609) 292-4997

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2202-73

Civil Action

CITY OF PHILADELPHIA, etc., et als.,
Plaintiffs-Respondents,

and

JOHN P. FAZZIO LANDFILL, INC., t/a
JOHN P. FAZZIO LANDFILL CO., et als.,
Plaintiffs-Intervenors-Respondents,

v.

STATE OF NEW JERSEY, etc., et al.,
Defendants-Appellants.

MOTION FOR STAY PENDING APPEAL.

To: CLERK OF THE COURTS

ARTHUR MEISEL, ESQ.
Jamieson, Walsh, McCardell, Moore and Peskin, Esqs.
Attorney for Plaintiffs-Appellants
1 West State Street
Trenton, New Jersey 08608

VINCENT DOTOLI, ESQ.
Attorney for Plaintiffs-Intervenors-
Appellants
Interstate 287 and McKinley Street
South Plainfield, New Jersey

SIRS:

PLEASE TAKE NOTICE that the undersigned, attorney for defendants-appellants, hereby moves the Superior Court of New Jersey, Appellate Division, for an order staying the judgment entered by the Superior Court of New Jersey, Law Division, Mercer County (Schoch A. J. S. C.) on March 27, 1974.

In support of the within motion, the defendants-appella.. will rely on the brief and affidavits submitted herewith and the brief and appendix submitted on July 9, 1974.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendants-Appellants

By: MARK L. FIRST
Deputy Attorney General

DATED: July 26, 1974

APPENDIX T.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-2202-73
Motion No. M-1978-73
Before Part P

Judges: HANDLER, MEANOR, CRANE

CITY OF PHILADELPHIA, etc., et als

and

JOHN P. FAZZIO LANDFILL, INC., t/a
JOHN P. FAZZIO LANDFILL CO., et als

v.

STATE OF NEW JERSEY, et al.

Moving Papers Filed:	July 26, 1974
Answering Papers Filed:	August 8 & 9, 1974
Date Submitted to Court:	August 12, 1974
Date Argued:	
Date Decided:	August 14, 1974

ORDER

This matter having been duly presented to the Court, it is hereby ordered as follows:

	GRANTED	DENIED	OTHER
MOTION FOR STAY		X	X

SUPPLEMENTAL:

The appeal shall be accelerated.

FOR THE COURT:

ALAN B. HANDLER
P. J. A. D.

I hereby certify that the
foregoing is a true copy of
the original on file in my
office.

ELIZABETH MCLAUGHLIN
Clerk

WITNESS, THE HONORABLE ALAN B. HANDLER, PRESIDING JUDGE OF PART P, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, this 14th day of August, 1974.

ELIZABETH MCLAUGHLIN
Clerk of the Appellate Division

APPENDIX U.

SUPREME COURT OF NEW JERSEY
#10927 September Term 1974

CITY OF PHILADELPHIA, etc., et al.,
Plaintiffs-Respondents

and

JOHN P. FAZZIO LANDFILL, INC., t/a
JOHN P. FAZZIO LANDFILL CO., et al.,
Plaintiffs-Intervenors-Respondents,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

Pursuant to Rule 2:12-1 it is ORDERED that the appeal from the judgment entered in this cause on March 25, 1974 in the Superior Court, Chancery Division, now pending in the Superior Court, Appellate Division (A-2202-73), be certified directly to this Court for review by this Court; and it is further

ORDERED that this cause shall be deemed pending on appeal in this Court, and that further proceedings herein shall be as provided for on appeals as of right, in accordance with the rules of this Court; and it is further

ORDERED that all papers to be filed by the parties in the prosecution of this appeal shall be filed by the Clerk of this Court without payment of fees for such filing; and it is further

ORDERED that this matter be consolidated with Hackensack Meadowlands Development Commission and State

of New Jersey v. Municipal Sanitary Landfill Authority, et al and City of Yonkers, New York (A-1592-73).

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton on this 7th day of October, 1974.

FLORENCE R. PESKOE
Clerk

APPENDIX V.

JAMIESON, MCCARDELL, MOORE, PESKIN and SPICER
A Professional Corporation
19 Chancery Lane
Trenton, N. J. 08618
(609) 396-5511
Attorneys for Plaintiffs-Respondents

SUPREME COURT OF NEW JERSEY
DOCKET No. A-82-74
September Term 1974
Civil Action

CITY OF PHILADELPHIA, etc., et al.,
Plaintiffs-Respondents,

and

JOHN P. FAZZIO LANDFILL, INC., t/a JOHN P. FAZZIO LANDFILL CO., et al.,
Plaintiffs-Intervenors-Respondents,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

ORDER GRANTING STAY AND CONTINUING INJUNCTIVE RELIEF.

This matter being opened to the court by Jamieson, McCardell, Moore, Peskin and Spicer, a Professional Corporation, attorneys for plaintiffs-respondents, Herbert F. Moore, Esq. appearing in the presence of Assistant Attorney General Stephen L. Skillman, attorney for defendants-appellants for an order temporarily staying the judgment of the Supreme Court of New Jersey in the above cap-

tioned matter and temporarily continuing the injunctive order heretofore entered by the Superior Court of New Jersey, Law Division, in connection therewith, and good cause being shown,

It is on this 20th day of November, 1975,

ORDERED, that the judgment of this court heretofore entered in this action on November 18, 1975 against plaintiffs-respondents be and hereby is temporarily stayed and that the injunctive order heretofore issued in connection with this case is hereby temporarily extended until further order of the court; and it is

FURTHER ORDERED, that plaintiffs-respondents shall file a memorandum with this court, and serve same upon the parties to this proceeding, not later than Wednesday, Nov. 26, 1975, demanding such relief as they deem appropriate including argument in support thereof, and defendants-appellants shall thereafter have a period of 10 days within which to file and serve a responsive memorandum thereto.

RICHARD J. HUGHES,
C. J.

Consent as to form:
William F. Hyland, Attorney General
of New Jersey
Attorney for Defendants-Appellants,
State of New Jersey, et al.

By: STEPHEN L. SKILLMAN,
Stephen L. Skillman,
Asst. Attorney General
Jamieson, McCardell, Moore, Peskin and Spicer

By: HERBERT F. MOORE
Herbert F. Moore

APPENDIX W.

JAMIESON, MCCARDELL, MOORE, PESKIN and SPICER
A Professional Corporation
19 Chancery Lane
Trenton, N. J. 08618
(609) 396-5511
Attorneys for Plaintiffs-Respondents

SUPREME COURT OF NEW JERSEY

DOCKET No. A-82-74
September Term 1974

Civil Action

CITY OF PHILADELPHIA, etc., et al.,
Plaintiffs-Respondents,

and

JOHN P. FAZZIO LANDFILL, INC., t/a JOHN P. FAZZIO LANDFILL CO., et al.,
Plaintiffs-Intervenors-Respondents,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

NOTICE OF MOTION.

To: Stephen L. Skillman, Esq.
Assistant Attorney General
State House
Trenton, N. J. 08625

NOTICE is hereby given by the undersigned, counsel for the plaintiffs-respondents, of the filing of a Motion with

the Supreme Court of New Jersey in accordance with the copy attached hereto.

Dated: November 26, 1975

JAMIESON, McCARDELL, MOORE,
PESKIN and SPICER
A Professional Corporation

by: HERBERT F. MOORE
Herbert F. Moore
Counsel for Plaintiffs-Respondents

JAMIESON, McCARDELL, MOORE, PESKIN
and SPICER
A Professional Corporation
19 Chancery Lane
Trenton, New Jersey 08618
(609) 396-5511
Attorneys for Plaintiffs-Respondents

SUPREME COURT OF NEW JERSEY
Docket No. A-82-74
September Term 1974

Civil Action

CITY OF PHILADELPHIA, etc., et al,
Plaintiffs-Respondents,

and

JOHN P. FAZZIO LANDFILL, INC., t/a
JOHN P. FAZZIO LANDFILL CO., et al,
Plaintiffs-Intervenors-
Respondents,

v.

STATE OF NEW JERSEY, et al,
Defendants-Appellants.

MOTION FOR REMAND, STAY OF JUDGMENT AND CONTINUATION OF RESTRAINTS

TO: Honorable The Chief Justice
and Associate Justices of
Supreme Court of New Jersey:

The plaintiffs-respondents, City of Philadelphia, City of Glen Cove, Landfill and Development Company, MAC Sanitary Landfill, Inc., Kinsley's Landfill, Inc. and

DeLorenzo-Interstate Waste Removal Co., Inc. (now Interstate Waste Removal Co., Inc.) move for an order of the New Jersey Supreme Court, in order of preference, and in the alternative, for the following relief:

A. Retention of jurisdiction and remand to the trial court for a plenary hearing on the following issues: (1) all issues raised in the complaint; and (2) whether, and for what period, injunctive relief should be continued if P. L. 1973, c. 363 is not declared unconstitutional by the state courts in New Jersey;

B. Retention of jurisdiction and remand to the trial court for a plenary hearing on the following issues: (1) reasonableness of exercise of police power in context of interstate commerce; (2) taking of private property for public use without just compensation; (3) whether and for what period injunctive relief should be continued if P. L. 1973, c. 363 is not declared unconstitutional by the state courts in New Jersey.

C. Retention of jurisdiction and remand to the trial court for a plenary hearing on the following issues: (1) reasonableness of exercise of police power in context of interstate commerce; (2) whether and for what period injunctive relief should be continued if P. L. 1973, c. 363 is not declared unconstitutional by the state courts in New Jersey.

D. Retention of jurisdiction and remand to the trial court for a plenary hearing on the following issues: (1) whether and for what period injunctive relief should be continued if P. L. 1973, c. 363 is not declared unconstitutional by the state courts in New Jersey.

E. Stay of judgment and continuation of injunctive relief pending a determination by the United States Supreme Court of an application by plaintiffs for continuing injunctive relief pending appeal.

Plaintiffs-Respondents will rely upon the annexed Brief and Appendix in support of said Motion.

JAMIESON, MCCARDELL, MOORE,
PESKIN and SPICER
A Professional Corporation

by: HERBERT F. MOORE
Herbert F. Moore
Counsel for Plaintiffs-
Respondents

APPENDIX X.

SUPREME COURT OF NEW JERSEY
M-433 September Term 1975

CITY OF PHILADELPHIA, et al.,
Plaintiffs-Movants,

and

JOHN P. FAZZIO LANDFILL, INC. t/a
JOHN P. FAZZIO LANDFILL CO., et al.,
Plaintiffs-Intervenors-
Respondents,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

This matter having been duly presented to the Court, it is ORDERED that the motion for a stay and continuation of injunctive relief is denied; and it is further

ORDERED that the order temporarily staying the judgment and injunctive order, entered November 20, 1975, is vacated, effective December 31, 1975.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 11th day of December, 1975.

FLORENCE R. PESKOE
Clerk

SUPREME COURT OF NEW JERSEY
M-436 September Term 1975

CITY OF PHILADELPHIA, et al.,
Plaintiffs-Respondents,

and

JOHN P. FAZZIO LANDFILL, INC. t/a
JOHN P. FAZZIO LANDFILL CO., et al.,
Plaintiffs-Intervenors-
Movants,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

This matter having been duly presented to the Court, it is ORDERED that the motion for a stay is denied.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 11th day of December, 1975.

FLORENCE R. PESKOE
Clerk

SUPREME COURT OF NEW JERSEY
M-434 September Term 1975

CITY OF PHILADELPHIA, et al.,
Plaintiffs-Movants,

and

JOHN P. FAZZIO LANDFILL, INC.
t/a JOHN P. FAZZIO LANDFILL
CO., et al.,
Plaintiffs-Intervenors-
Respondents,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

This matter having been duly presented to the Court, it is ORDERED that the motion for a remand to the Superior Court, Law Division, for such further proceedings, if any, that that court may deem appropriate is granted; provided, however, that any relief granted by the Law Division shall not include the issuance or continuation of a stay; and it is further

ORDERED that this Court does not retain jurisdiction.

WITNESS, the Honorable Richard J. Hughes, Chief Justice, at Trenton, this 11th day of December, 1975.

FLORENCE R. PESKOE
Clerk

APPENDIX Y.

SUPREME COURT OF THE UNITED STATES

No. A-563

CITY OF PHILADELPHIA, ET AL.,
Appellants

v.

NEW JERSEY, ET AL.

ORDER.

UPON CONSIDERATION of the application of counsel for the appellants and the response filed thereto,

IT IS ORDERED that the judgment of the Supreme Court of New Jersey entered November 18, 1975, in case No. A-82, be and the same is hereby, stayed pending the timely filing of a notice of appeal, the timely docketing of the appeal and action by this Court on the jurisdictional statement in the above-entitled case.

If the appeal is dismissed, this order is to terminate automatically. In the event that jurisdiction is noted or postponed, this order is to remain in effect pending the issuance of the mandate of this Court.

WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Court of the United States

Dated this 31
day of December, 1975

A true copy MICHAEL RODAK, JR.
Test:
Clerk of the Supreme Court of the United States
By FRANCIS J. CORSON

APPENDIX Z.

JAMIESON, MCCARDELL, MOORE, PESKIN and SPICER
A Professional Corporation
19 Chancery Lane
Trenton, N. J. 08618
(609) 396-5511
Attorneys for Plaintiffs-Respondents.

SUPREME COURT OF NEW JERSEY
DOCKET NO. A-82-74
SEPTEMBER TERM 1974

Civil Action

CITY OF PHILADELPHIA, etc. et al.,
Plaintiffs-Respondents,

– and –

JOHN P. FAZZIO LANDFILL, INC.,
t/a JOHN P. FAZZIO LANDFILL
CO., et al.,
Plaintiffs-Intervenors-Respondents,

v.

STATE OF NEW JERSEY, et al.,
Defendants-Appellants.

AFFIDAVIT.

STATE OF NEW JERSEY }
COUNTY OF MERCER } *ss.:*

RICHARD A. PELUSO, of full age, being duly sworn according to law, deposes and says:

1. I am a professional engineer licensed to practice in the State of New Jersey.

2. I hold a master's degree in Environmental Engineering, and have completed course work toward a doctor's degree in said field.

3. I am Vice President of Wehran Engineering Corporation which company specializes in the design of sanitary landfills and solid waste management in general.

4. I have examined the report entitled *Solid Waste: A Coordinated Approach*, 7th edition, prepared by the State of New Jersey County and Municipal Government Study Commission. This report is usually referred to as the Musto Report. This report takes the position, based upon certain acreage calculations of existing landfill sites that the available landfill acreage in New Jersey will be entirely exhausted by 1981, and that the landfills serving Bergen, Essex, Hudson, Passaic and Union Counties, which produce 48% of the State's annual volume of solid waste, will be exhausted in 1975.

5. The aforesaid calculations are based on inaccuracies and misconceptions of the landfill business. On page 4 of the report, it is stated that the calculations of landfill acreage are based upon an average depth of fill of 15 feet, including earth cover and minimal compaction. In actual practice throughout New Jersey, the average fill in major landfills is at least 40 feet.* This conclusion can be supported by examination of the engineering designs on file in the Department of Environmental Protection. I have personally been involved in engineering design of a significant number of landfills in New Jersey, and have personally made site inspections of a large percentage of the major landfill sites in the state, all of which support this conclusion. The significance of the variance in full results in substantial increase in the actual capacity of available landfill acreage as of 1972.

6. According to Table IV-1 on page 37 of the Musto Report, the available landfill acreage as of 1972 is 9,880 acres. To determine landfill capacity based on the assumption of 15 feet depth of fill, the Musto Report calculates that 783 acres of landfill space will be used up during the year of 1972, when in actuality, less than ½ of the acreage will be thoroughly used up. This is based on 40 feet rather than 15 feet fill. This will effectively extend the landfill life throughout the State of New Jersey from 1981 to approximately 1990.

7. In addition to the engineering designs on file with the Department of Environmental Protection and giving consideration to landfill designs previously filed with the Department but not yet taken into consideration in their calculations, together with landfill designs of which I have personal knowledge that are in the process of being developed, there is available as of November 25, 1975, approximately 180,000,000 in place cubic yards for disposal. The effect of this would be to extend existing landfill life expectancy to approximately 1986. This evaluation does not take into consideration other landfills presently being designed or contemplated by other engineering concerns, which will add to the presently known life expectancies. This conclusion is in harmony with the conclusion the Musto Report should have reached had it properly calculated the average depth of fill at 40 feet rather than 15 feet.

8. The waste generated in Pennsylvania, and being disposed of in New Jersey is estimated at 10,000 tons a week. A 200 acre site brought to 50 feet elevation would satisfactorily handle this disposal for a period of approximately 15 years.

9. Sanitary landfilling of devastated areas resulting from mining operations is an ideal land reclamation project

if operated in accordance with the present Department of Environmental Protection rules and regulations. While there are no statistics available as to the amount of such devastated acres in New Jersey, it is readily apparent to an observer, and particularly to me, who specializes in waste disposal, that there are many sites throughout New Jersey that are ideally suited for this type of land reclamation in accordance with Department of Environmental Protection regulations. The use of such areas for landfill purposes would significantly increase the long-range capacity for waste disposal in New Jersey.

10. The Musto Report, on page 38, table 4, reveals that by the end of 1975, Bergen, Essex, Hudson, Passaic and Union Counties will have zero acres available. This, in fact, is not true since there are landfills in operation continuing in these areas.

11. On behalf of Interstate Waste Removal Co., Inc., I have submitted a preliminary engineering design to the New Jersey Department of Environmental Protection for a certain severely mined tract of land in Bordentown Township, Burlington County, New Jersey, comprising 93 acres and located upon Block 134, Lots 3, 4, and 14 as same appear on the Bordentown Township Tax Atlas.

12. When brought to final grade and cover, properly engineered and designed sanitary landfills are ideally suited for public recreational uses, and may also be used for specific commercial and industrial projects which have been considered at the time engineering plans and designs were filed with the New Jersey Department of Environmental Protection. In filing plans which contemplate commercial and industrial use, certain portions of the proposed landfill facility may be left untouched in order to avoid problems concerning support of heavy structures.

13. Sanitary landfilling may be used as an economical process to recover ravaged land. The recovery of land in this manner may have the dual advantages of recreating recreational space and green acres, while simultaneously providing a facility from which methane gas may readily be recovered and processed into natural gas and fed into the commercial gas system.

*Interpretation of the Notice of Public Hearing dated March 1975 issue of the New Jersey Register, Document #021-75-02 dated February 14, 1975 and signed by David Bardin, Commissioner of Environmental Protection indicates that 52 constituting the major landfill facilities within the State of New Jersey handle 80% of the solid waste disposed of in the State.

RICHARD A. PELUSO
Richard A. Peluso

Sworn to and subscribed before me
this 25th day of November, 1975.
FLORENCE W. EDWARDS
Florence W. Edwards

Notary Public of New Jersey
My Commission Expires May 29, 1976

APPENDIX AA.

Delaware—*D. C. A.* 16, § 1701.

§ 1701. Bringing garbage or household refuse into State; permit and bond.

No person shall bring into the State from any place without the State, garbage or household refuse for the purpose of feeding it to hogs or for any other purpose, unless there has first been obtained from the State Board of Health a permit naming the area within which such garbage or household refuse shall be disposed of, and unless there has been deposited with the State Board a bond for the sum of $500 which shall be forfeitable if the disposal of such garbage is not provided for in such a manner as meets the requirements of the State Board. (38 Del. Laws, c. 46, § 1; Code 1935, § 890; 16 Del. C. 1953, § 1701.)

Illinois—S. *H. A.* ch. 111½, § 1021.

§ 1021. Acts prohibited.

No person shall:

(a) Cause or allow the open dumping of garbage;

(b) Cause or allow the open dumping of any other refuse in violation of regulations adopted by the Board;

(c) Abandon, dump, or deposit any refuse upon the public highways or other public property, except in a sanitary landfill approved by the Agency pursuant to regulations adopted by the Board;

(d) Abandon any vehicle in violation of the "Abandoned Vehicles Amendment to the Illinois Vehicle Code", as enacted by the 76th General Assembly; [1]

1. Chapter 95½, § 18-100 et seq.

(e) Conduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activities, without a permit granted by the Agency upon such conditions, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations adopted thereunder, after the Board has adopted standards for the location, design, operation, and maintenance of such facilities;

(f) Dispose of any refuse, or transport any refuse into this State for disposal, except at a site or facility which meets the requirements of this Act and of regulations thereunder.

P. A. 76-2429, § 21, eff. July 1, 1970.

Louisiana—LSA—R. S. 40:1299-36.

§ 1299.36. Transportation of industrial wastes, burial or other disposal.

A. No person shall transport any industrial waste material into Louisiana with the intent to bury, store or otherwise dispose of such wastes in Louisiana if it is reasonably foreseeable that the health of any member of the public or animal life will be endangered thereby. For the purposes of this section the term "industrial wastes" shall include both solid and liquid wastes from industrial processes. This section shall not be construed so as to prohibit the transportation of waste materials into Louisiana which may be beneficial to citizens of Louisiana.

B. It shall be unlawful for any person to bury or otherwise dispose of industrial waste material, whether solid or liquid, which has been transported into Louisiana, if it is reasonably foreseeable that the health of any member of the public or animal life will be endangered thereby. This section shall not be construed so as to prohibit the transportation of waste materials into Louisiana with the intent to further process such materials into useful products. Provided that this section shall not prohibit the transportation from Louisiana offshore locations into the state of oil waste material disposed of into abandoned wells located within the state's boundaries, nor shall this section prohibit said disposal of oil waste material into abandoned wells located within the state's boundaries.

C. Whoever violates the provisions of this section shall be fined not less than ten thousand dollars nor more than fifteen thousand dollars.

D. Any existing civil remedy may be used for the enforcement of this section by any interested party. The state board of health is hereby declared to be an interested party in the enforcement of this section.

E. Nothing herein shall be construed so as to divest the state board of health of any regulatory power which is not inconsistent herewith.

Added by Acts 1973, No. 78, § 1.

Maine—17 *M. R. S. A.* § 2253.

§ 2253. Out-of-state waste matter.

As used in this section, "waste matter" means garbage, refuse, solid or liquid waste, ashes, rubbish, industrial and commercial waste, and all other refuse of every description, whether loose, in containers, compacted, baled, bundled or otherwise.

No person, firm, corporation or other legal entity shall deposit, or cause or permit to be deposited, any waste matter in any structure or on any land within the State, which waste matter originated outside the State.

Nothing in this section shall be construed to prohibit the transportation of waste matter into the State for use as a raw material for the production of new commodities which are not waste matter as defined.

Whoever shall violate this section shall be punished by a fine of not less than $200 nor more than $2,000 for each violation. Each day that such violation continues or exists shall constitute a separate offense.

The Superior Court, upon complaint of the Attorney General, the municipal officers of any municipality, or any local or state health officer, shall have jurisdiction to restrain or enjoin violations of this section, and to enter decrees requiring the removal from the State of waste matter deposited in violation of this section. In any such civil proceeding neither an allegation nor proof of unavoidable or substantial and irreparable injury shall be required to obtain a temporary restraining order or injunction, nor shall bond be required of the plaintiff; and the burden of proof shall be on the defendant to show that the waste matter involved originated within the State.

The Legislature finding that waste matter of the nature hereinafter described poses no threat to the environment of this State, the provisions of this section shall not be construed to prohibit persons, firms, corporations and other legal entities now or previously depositing waste matter on property within the State owned on January 1, 1970 by them, which waste matter originates from property owned by them adjacent to the border of the State, from continuing to so deposit waste matter of the same nature as has been so deposited; except that this provision shall not apply to solid waste after December 31, 1971.
1970, c. 570, eff. Feb. 5, 1970.

Massachusetts—*M. G. L. A.* c. 270 § 17A.

§ 17A. Importation of outside garbage and other waste for deposit in dumping facilities; penalty; exceptions.

No person, firm or corporation or any city or town engaged in the business of the collection and disposal of

rubbish or garbage or other refuse from residences or business facilities located outside the commonwealth, shall deposit such rubbish, garbage or other refuse in any dumping facility in this commonwealth. Whoever violates this section shall be punished by a fine of one hundred dollars. Each such violation shall constitute a separate offense. The provisions of this section shall not apply to rubbish, garbage or refuse so deposited under a regional waste matter agreement entered into by the governing bodies of the parties to such agreement whether within or without the commonwealth, nor under a recycling program whereby at least sixty per cent of such rubbish, garbage or refuse is scheduled to be recycled; provided, however, that the remainder of such rubbish, garbage or refuse not so recycled shall not be so deposited without the prior approval of the governing body of the city or town wherein such rubbish, garbage or refuse is to be deposited.
Added by St. 1971, c. 474.

1971 Enactment. St. 1971, c. 474 was approved June 30, 1971.

New Hampshire—*R. S. A.* 147:30e.

147:30-e Definitions. As used in this subdivision:

I. "Waste matter" means garbage, refuse, solid or liquid waste, ashes, rubbish, industrial and commercial waste, and all other refuse of every description, whether loose, in containers, compacted, baled, bundled or otherwise.

Source. 1971, 272:2, eff. Aug. 22, 1971.

147:30-f Prohibition. No person, firm, corporation or other legal entity shall deposit, or cause or permit to be deposited, any waste matter in any structure or on any land within the state or in the territorial waters of the

state, which waste matter originated outside the state. Nothing in this section shall be construed to prohibit the transportation of waste matter into the state for use as a raw material for the production of new commodities which are not waste matter as defined. Each person guilty of a violation of this section shall be guilty of a separate offense for each day all or part of the waste matter which is the subject matter of such violation is allowed to remain in the structure, on the land, or in the water in which it was deposited.

Source. 1971, 272:2, eff. Aug. 22, 1971.

147:30-g Exemption. Nothing in RSA 147:30-f shall be construed to prohibit the disposal of out-of-state garbage, manure, putrescible materials or refuse at a public disposal facility provided the out-of-state city or town of origin is a participating member of a New Hampshire regional refuse disposal district as provided in RSA 53-B, or has arranged to share public disposal facilities with a New Hampshire city or town.

Source. 1971, 272:2, eff. Aug. 22, 1971.

147:30-h Penalty. Whoever shall violate this subdivision shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1971, 272:2. 1973, 529:20, eff. 11:59 P.M., Oct. 31, 1973.

Pennsylvania—35 *P. S.* § 6007.

§ 6007. Applications and permits.

(a) It shall be unlawful for any person, municipality, county or authority to use or continue to use their land or the land of any other person, municipality, county or authority as a solid waste processing or disposal area of a solid waste management system or transport solid wastes

to a mine without first obtaining a permit from the department: Provided, however, That no permit will be required by municipalities, counties or authorities transporting their municipal wastes to a landfill operating under permit when such landfill is a part of their solid waste management plan which has been approved by the department: And, Provided further, That this section shall not apply to farmers and they shall not be required to obtain a permit for normal farming operations: and provided further, that this section shall not apply to the storage of by-products which are utilized in the processing or manufacturing of other products.

(b) Application for a permit shall be in writing and shall be made on a form prescribed, prepared and furnished by the department and shall set forth such information and be accompanied by such data as the department may require.

(c) Upon approval of the application, the department shall issue a permit for the operation of each solid waste processing or disposal facility or area set forth in the application.

(d) Plans, designs and relevant data for the construction or alteration of solid waste processing and disposal facilities and the location of solid waste processing and disposal areas shall be prepared by a registered professional engineer and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area except when food process wastes are used for agricultural purposes in a manner which will not create a public health hazard or pollution of the air or water.

(e) Any permit granted by the department, as provided in this act, shall be revocable or subject to suspen-

sion at any time the department shall determine that the solid waste processing or disposal facility or area (i) is, or has been conducted in violation of this act or the rules, regulations, or standards adopted pursuant to the act, or (ii) is creating a public nuisance, or (iii) is creating a health hazard, or (iv) adversely affects the environment or economic development of the area.

(f) In any case where a permit is required by this section for the disposal of solid wastes produced by a public utility or a municipally owned facility producing electricity or other types of power intended for use by the public, the department shall not refuse an application, or revoke or suspend a permit previously granted, unless it first obtains from Pennsylvania Public Utility Commission a certification that such refusal, revocation, or suspension will not adversely affect utility service to the public.

(f.1) The department shall refuse any application from and shall not grant any permit to any person, municipality, county or authority which includes as part of its solid waste management system any solid waste collected from any location in another state that does not accept solid waste from this Commonwealth.

(g) In case any permit is denied, suspended or revoked, a hearing shall be held thereon before the department within fifteen days after request therefor is made by the person, municipality, county or authority whose permit is denied, suspended or revoked. Within seven days following the date of such hearing the department shall notify all parties in writing of the determination of said hearing and the reasons therefor. Any party aggrieved by this determination shall have the right of appeal in accordance with the provisions of the act of June 4, 1945 (P. L. 1388), known as the "Administrative Agency Law." [1]

1. 71 P. S. § 1710.1 et seq.

1968, July 31, P. L. 788, No. 241, § 7. As amended 1970, Jan. 12, P. L. (1969) 456, § 3; 1974, Dec. 30, P. L. —, No. 337, § 3, imd. effective.

1974 Amendment: Added subsec. (f.1).

§ 6009. Prohibited acts.

It shall be unlawful for any persons, municipality, county, or authority to:

(1) Dump or deposit, or permit the dumping or depositing of any solid wastes onto the surface of the ground or into the waters of the Commonwealth without having obtained a permit as required by section 7: [1] Provided, That this provision shall not prohibit the use of solid wastes in normal farming operations or in the processing or manufacturing of other products in a manner that will not create a public nuisance or adversely affect the public health: And, Provided further, That this provision shall not prohibit individuals from dumping or depositing solid wastes resulting from their own residential activities onto the surface of ground owned or leased by them when such wastes do not thereby create a public nuisance or adversely affect the public health.

(2) Construct, alter or operate a solid waste processing or disposal facility or area of a solid waste management system without a permit or other approval from the department or in violation of the rules, regulations, standards, or orders of the department.

(3) Burn solid wastes except in a manner approved by the Air Pollution Commission or the department.

(4) Store, collect, transport, process or dispose of solid waste contrary to the rules, regulations, standards or

1. Section 6007 of this title.

orders of the department or in such a manner as to create a public nuisance.

(5) Refuse or hinder entry and inspection by an agent or employe of the department after such agent or employe identifies himself and gives notice of his purpose.

(6) Transport or permit the transportation of any solid waste intended for disposal in mines without having obtained a permit as required by this act, or contrary to the rules, regulations, standards or orders of the department, or in such manner as to adversely effect or endanger the health, safety, environment or economy of the area of destination or of any area in Pennsylvania through which such transportation occurs.

(7) Dump or deposit or permit the dumping or depositing of any solid wastes into any mines of the Commonwealth without having obtained a permit as required by this act, or contrary to the rules, regulations, standards or orders of the department, or in such manner as to adversely effect or endanger the health, safety, environment or economy of the area.

(8) Transport or permit the transportation of solid waste into the Commonwealth for disposal in a mine located therein, or dump or deposit or permit the dumping or depositing into any mines of the Commonwealth, any solid waste so transported.

(9) Process as part of a solid waste management system any solid waste collected from any location in another state that does not accept solid waste from this Commonwealth.

No person shall be held responsible under the provisions of this section for the dumping or depositing of any solid waste on ground owned or leased by him without his

expressed or implied consent, permission or knowledge. 1968, July 31, P. L. 788, No. 241, § 9. As amended 1970, Jan. 12, P. L. (1969) 456, § 5; 1974, Dec. 30, P. L. —, No. 337, § 4, imd. effective.

1974 Amendment: Added clause (9).

Rhode Island—*G. L.* 1956, § 23-46-6

23-46-6. Depositing of out of state refuse prohibited.

No person, firm or corporation engaged in the business of collecting and disposing of garbage, refuse or any form of waste from out of state residences or business facilities shall deposit such out of state garbage, refuse or waste at any public or private dumping facilities within the confines of this state. Violation of any of the provisions of this section shall be punishable by a fine not to exceed five hundred dollars ($500).

History of Section.

As assigned, P. L. 1970, ch. 65, § 1.

Vermont—24 *U. S. A.* § 2204 *et seq.*

§ 2204. Out-of-state collection.

(a) No person may dispose of or cause to be disposed of within the state any commercial or residential refuse, garbage or waste material collected or transported from outside of the state.

(b) A person who violates this section shall be fined not more than $100.00 for each offense.

(c) [Expired. January 1, 1972]

Added 1969, No. 36, § 1, eff. April 1, 1969.

§ 2205. —Exceptions.

Section 2204 of this title shall not apply to:

(1) agreements entered into by a municipality or planning commission on or before the effective date of this

act for the disposal or collection of refuse, garbage or waste material; or

(2) municipalities permitting the disposal of refuse, garbage or waste material from a contiguous municipality in another state provided that the other state has reciprocal provisions.—1969, No. 36, § 2, eff. April 1, 1969.